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H.R. 3800, THE SUPERFUND REFORM ACT OF 1994, AND ISSUES RELATED TO REAUTHORIZATION OF THE FED-ERAL SUPERFUND PROGRAM

(103 - 83)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
WATER RESOURCES AND ENVIRONMENT
OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

JUNE 9, JULY 12 and 14, 1994

Printed for the use of the Committee on Public Works and Transportation





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SUMMARY OF H.R. 3800 THE SUPERFUND REFORM ACT OF 1994

PRODUCED BY THE STAFF OF
THE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

June 8, 1994

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BACKGROUND

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, commonly known as Superfund, was enacted to develop a comprehensive program to set priorities to clean up the worst existing abandoned or uncontrolled hazardous waste sites. The Environmental Protection Agency has the major responsibility for carrying out this Act. The law makes those parties responsible for the hazardous waste sites pay for cleanups wherever possible and provides for a hazardous waste trust fund, the Superfund, to perform remedial cleanups in cases where responsible parties cannot be found or otherwise be held accountable. Superfund is also available for responding to emergency situations involving hazardous substances. In addition, the law was intended to advance scientific and technological capabilities in all aspects of hazardous waste management, treatment, and disposal.

Superfund is an outgrowth of hazardous waste horror stories of the late 1970's. Love Canal, a community in Niagara Falls, New York, was evacuated after hazardous waste buried over a 25 year period contaminated the groundwater and surrounding soils. Superfund was enacted during the lame duck session of the Carter Administration as a \$1.6 billion five-year program to address our nation's hazardous waste problem. The original program was inadequate and the program was reauthorized in 1986 for an additional five years at \$8.5 billion. (Superfund Amendments and Reauthorization Act of 1986, P.L. 99-499, Oct. 17, 1986.) Superfund was extended for three years, through fiscal year 1994, by the Omnibus Budget Reconciliation Act of 1990. The taxes were extended through the end of 1995.

The Superfund trust fund obtains its revenue from several sources -- a tax on crude oil and petroleum products, a tax on certain chemicals, an environmental tax imposed on a portion of the modified alternative minimum taxable income of a corporation, cost recoveries from responsible parties, penalties and punitive damages assessed under Superfund, money appropriated from general revenues, and income from investment of the fund balance.

Superfund imposes liability on any person that generated hazardous substances found at a site, present and former owners and operators of a site, and certain transporters who disposed of hazardous substances at a site. Liability under Superfund is strict, joint and several. Strict liability is liability without fault. Liability is established by showing that the person either owned the site or contributed to the hazardous substances at the site; EPA need not establish willful or simple negligence. Joint and several liability means that all parties can be sued together or any one of the parties can be sued individually for 100 percent of cleanup costs. (EPA cannot recover more than 100 percent of total cleanup costs.)

Response actions under Superfund are divided into two categories -- removal and remedial actions. Response actions are intended to be short-term emergency responses to an immediate need. Except in certain exigent circumstances, a removal action cannot require the obligation of more than \$2 million or take longer than 12 months from the date of initial response. In addition, a removal action must contribute to the efficient performance of any long-term remedial action with respect to the release or threatened release concerned. Thus far, EPA had responded to roughly 3,500 emergencies at 2,700 hazardous waste locations nationwide.

The more visible and controversial aspect of the Superfund program is the long-term remedial action program. The remedial action program is supposed to provide for permanent remedies to the nation's most serious hazardous waste sites. The initial step in having a site considered for a remedial action under Superfund is for EPA's National Response Center to be notified of a release or threatened release of a hazardous substance. This information is usually provided by state and local governments, but may be provided by anyone, such as interest groups and individuals. This notification results in a site being entered into CERCLIS (Comprehensive Environmental Response, Compensation, and Liability Information System), which is EPA's computerized data base of potential Superfund sites. EPA will then perform a preliminary assessment which is the process of collecting and reviewing available information about a known or suspected hazardous waste site or release. EPA uses this information to determine if the site requires further study. If further study is needed, a site inspection is undertaken.

A site evaluation is a technical phase that follows the preliminary assessment and is designed to collect more extensive information about the hazardous waste site. This can include data collection and sampling. The preliminary assessment and site evaluation tend to greatly reduce the number of sites considered for inclusion in Superfund. Over one-half of the sites which have received preliminary assessments and site evaluations have been determined to be sites where no further federal action would be taken. Sites remaining in the inventory are eligible for scoring under the Hazard Ranking System.

The Hazard Ranking System (HRS) is a scoring system the EPA uses to evaluate the relative risk to human health and the environment posed by uncontrolled hazardous waste sites. It is a numerically based scoring system that uses information obtained from the preliminary assessment and site evaluation. The HRS assigns each site a score ranging from 0 to 100 based on the likelihood that a site has released or has the potential to release contaminants into the environment; the characteristics of the waste (toxicity and waste quantity); and the people or sensitive environments affected by the release. If a site receives a Hazard

Ranking System score of 28.5 or above, the site is eligible for listing on the National Priorities List (NPL).

The National Priorities List is a listing of sites which are eligible for Superfund financed cleanup activities, and which will receive priority consideration under the Superfund program. The fact that a site has been placed on the NPL does not preclude responsible parties from paying for the cleanup costs. In fact, EPA will vigorously seek in all instances to recover cleanup costs from responsible parties.

Once a site has been placed on the National Priorities List, it is subjected to a remedial investigation in order to select the cleanup strategy best suited for the traits of that site. A remedial investigation entails extensive sampling and laboratory analyses to generate more precise data on the types and quantities of waste at the site, the soil type and water drainage patterns, and the resulting environmental or health threats. At the same time as the remedial investigation is occurring, a feasibility study analyzes the specific needs of the individual site, and evaluates alternative cleanup approaches on the basis of their relative effectiveness and cost.

The selection of a remedy remains one of the most contentious aspects of the Superfund program. EPA, using the direction given it in the 1986 amendments, has developed internal guidance for remedy selection using nine criteria divided into three groups. The first two criteria are referred to as the "threshold criteria" because they must be satisfied in order for a remedy to be eligible for selection. They are overall protection of human health and the environment, and compliance with other environmental laws (those which are either legally applicable or relevant and appropriate -- ARARS).

The second set of criteria are the "primary balancing criteria". These are: long-term effectiveness and permanence; reduction of toxicity, mobility, or volume through treatment; short-term effectiveness; implementability; and cost. These criteria are used to help select one alternative from the full range of potential remedies that meet the threshold criteria.

The third group of criteria, "modifying criteria", are state acceptance and community acceptance of the proposed remedial action. These criteria are considered after a remedial action has been formally proposed and noticed for public comment. The criteria are used to evaluate community and state concerns. EPA may change the selected remedy based on expressed concerns of the state, community or any party responding during the public comment period.

Once a remedy is selected, a Record of Decision is prepared to document site conditions and offer an explanation and justification

of EPA's remedy selection. EPA will then prepare a remedial design consisting of the preparation of plans and specifications for implementing the chosen remedial alternative. Finally, EPA will embark upon construction or other work necessary to implement the remedial alternative. EPA averages over 5 years and over \$25 million in expenditures for addressing a problem at a National Priorities List site.

The law emphasizes that EPA is to obtain funding for cleanup from responsible parties whenever possible. EPA begins identifying responsible parties early in the process and continues that process even following completion of any response action. EPA has authority to settle Superfund liability claims but will file suit where necessary to protect human health and the environment. In addition, since 1986, EPA has had specific authority to engage in mixed funding, that is, engage in cleanups using both Superfund and responsible party financing at the same site. EPA also has authority to engage in de minimis settlements with parties that contributed very small amounts of waste at a hazardous waste site so that small contributors may be released from further negotiations or litigation. These authorities foster the EPA policy of encouraging responsible parties to pay for cleanups through settlements.

The law includes a strong citizen's suit provision. Any person may bring suit against the Government for failure to perform mandatory duties under the Superfund law and against any person for violating the law's requirements. In the case of suits against the Government for failure to perform mandatory duties, a Federal District Court can order the Government official to perform the duty. In the case of violation of the law, the court can enforce the requirement, order action to correct the violation, and impose penalties.

H.R. 3800

The Administration's Superfund proposal is contained in H.R. 3800, the Superfund Reform Act of 1994. It was introduced, by request, on February 3, 1994 by Congressmen Swift, Dingell, Mineta, Rostenkowski and Applegate.

TITLE I -- COMMUNITY PARTICIPATION

In General:

The goal of this title is to provide affected communities and individuals with early, meaningful involvement in the remedial process. The bill authorizes communities to establish Community Working Groups (CWG) at each site. It also promotes earlier access to existing programs for Technical Assistance Grants at National Priorities List sites (and would expand eligibility for grants to

non-NPL sites) and better dissemination of information to the communities. Additionally, the proposal requires each state to establish a Citizen Information and Access Office (CIAOs) as a state-wide clearinghouse for Superfund related information.

CWGs will provide affected citizens with greater access to site information. The bill also gives CWGs the authority to make actual recommendations in determining future land use, which is one of the factors that is considered in selecting a remedy under the bill. With respect to future land use, the Administrator is required to give "substantial weight" to the CWG recommendation. For all other issues, including remedy selection, CWGs can provide greater input throughout the process, but have no right of concurrence with EPA decisions.

Environmental Justice:

The concept of Environmental Justice focuses on the risks faced by disadvantaged communities through multiple sources of pollution. The bill proposes to amend the Hazard Ranking System, the method used to assess a site's eligibility for NPL listing, to consider risks posed to minority and low income communities from all sources of exposure, not just from the site proposed for listing.

TITLE II -- STATE ROLE

Currently, Superfund is administered strictly at the federal level. Unlike the Clean Water Act, where most of the activity is carried out by states under delegation from EPA, there is no comparable delegation authority for Superfund. Many states, however, have their own abandoned hazardous waste sites cleanup programs. This dual-track approach to cleanup can lead to duplicated efforts at some sites and inconsistent results at others.

In an effort to enlarge the state role in Superfund and to limit duplication of effort, H.R. 3800 authorizes EPA to delegate all or part of the Superfund program to the states. A state may choose to run the entire program or address only certain categories of sites.

Before EPA can delegate Superfund authority to a state, the state must demonstrate that its program is substantially consistent with the federal program and contains the "legal authority, technical capability and resources necessary" to run the program.

A state would be given access to Fund resources at any site over which the state has Superfund authority. However, the state will only be able to use the federal Fund to meet more stringent state cleanup standards if those standards have been promulgated

"under any state environmental law specifically addressing remedial action".

TITLE III -- VOLUNTARY RESPONSE

One of the goals of the Administration proposal is to get abandoned sites back into productive use as quickly as possible for both environmental and economic redevelopment reasons. By encouraging the reuse of abandoned property (through limiting any potential Superfund liability associated with the cleanup and site reuse) the Administration hopes to entice owners or potential purchasers to undertake voluntary cleanups of abandoned waste sites (known as "brownfields") rather than develop pristine areas ("greenfields").

A voluntary cleanup is one that is undertaken by the owner of the facility or an interested purchaser and where that owner or interested purchaser agrees to pay all remediation costs as well as any state oversight costs. While the Administration intends to encourage these voluntary cleanups, it does not intend to implement a federal voluntary cleanup program. Instead, H.R. 3800 provides grants to states as incentives for states to implement voluntary cleanup programs.

In order for a state to qualify for a grant, it must demonstrate that its program covers all "eligible facilities", provides adequate public participation, contains provisions requiring the state to undertake the cleanup if the owner or prospective purchaser fails to do an adequate job, and contains adequate oversight and enforcement authorities.

TITLE IV -- LIABILITY AND ALLOCATION

The bill retains the strict, joint and several, and retroactive liability scheme currently in Superfund. However, recommended changes to the statute, including exemptions for parties with minimal contributions of waste to the site, expedited settlement opportunities for municipalities and small businesses, and a mandatory cost allocation program, will significantly change how the liability provisions operate.

Exemptions from Superfund Liability:

O De Micromis Municipal Solid Waste (MSW) and Municipal Sewage Sludge (MSS) Exemption: Exempts generators or transporters of less than 500 pounds per site of MSW or MSS;

- o De Micromis Hazardous Waste Generator/Transporter Exemption: Exempts any generator or transporter of less than ten pounds or 10 liters of hazardous substances per site unless the hazardous substances contribute significantly to the cost of cleanup;
- o Bona fide Purchaser Exemption: Exempts any bona fide purchaser (similar to the current innocent landowner defense); and
- O Government Exemption: Exempts the United States from liability as an owner of federal land on which a private party engaged in mining activities which led to the release of hazardous substances.

Liability Cap:

The proposal caps municipal generator/transporter liability at 10% of the total site remediation cost. Any municipal generator/transporter liability in excess of the cap will be considered part of the orphan share (which will be paid for by the Superfund Trust Fund.)

Expedited Settlements/Special Settlement Authorities:

These provisions authorize the Administrator to enter into expedited settlements to allow parties to cash-out their liability and avoid continuing litigation and financial uncertainty. Those parties allowed to enter into expedited settlements are:

- o De Minimis parties;
- Non-De Micromis municipal solid waste and municipal sewage sludge generators and transporters;
- o Municipal site owners and operators; and
- Small businesses.

Both the municipalities and small businesses are also entitled to an ability to pay determination. Under this provision, EPA will determine whether or not a municipal or small business potentially responsible party (PRP) can afford to pay its allocated share of responsibility. Any amount in excess of the party's ability to pay will be covered by the orphan share.

Allocation of Responsibility:

The proposal institutes a mandatory but non-binding mechanism for allocation of responsibility. EPA currently has the authority to make non-binding allocations of responsibility (NBARs) at

Superfund sites. Under that settlement tool, EPA can do a preliminary allocation of responsibility which is non-binding on the parties.

The allocation process is set out below:

- o Within 60 days of a site's placement on the NPL or the beginning of Remedial Investigation/Feasibility Study (RI/FS), EPA must begin a search for potentially responsible parties;
- No more than 18 months after initiation of RI, EPA notifies identified PRPs of their potential liability and provides a list of individuals qualified to perform the allocation of responsibility;
- Within 90 days of the appointment of the allocator, PRPs provide lists of other potentially responsible parties to EPA;
- o Chosen allocator begins allocation process;
- o Within 180 days of the issuance of a list of all potentially responsible parties, a final allocation determination is made; and
- Administrator of EPA must accept settlement offers based on the allocation unless the Administrator and the Attorney General find, within 60 days of the allocation, that a settlement based on the allocation "would not be fair, reasonable, and in the public interest".

Although the allocation process is non-binding, any party faces stiff disincentives for refusing to accept the allocated share. These include joint and several liability for any remedial costs not covered by the settling parties, and responsibility for the orphan share. It is assumed that these provisions will encourage greater participation by the parties.

Orphan Share Funding:

Orphan shares are cost shares allocable to insolvent or defunct parties; the difference between the total amount allocated to contributors of municipal solid waste and the 10% liability cap; and the difference between a party's liability and ability to pay. They would be paid by the Superfund Trust Fund. H.R. 3800 caps the orphan fund share at \$300 million per year funded through a new appropriation.

TITLE V -- REMEDY SELECTION

In General:

The current Superfund program has no specific cleanup standards. Instead, it relies on the application of legally applicable or relevant and appropriate requirements of federal and state environmental laws. The Administration bill proposes to eliminate the reliance on relevant and appropriate requirements and limit the use of more stringent applicable state requirements. The envisioned Superfund program will rely on national cleanup standards and generic cleanup levels in remedy selection.

The national standards will be a risk based goal (probably a risk range) setting the overall risk acceptable at each Superfund site. The standards will be promulgated by the Administrator and used as the basis for all Superfund cleanups.

Generic cleanup levels are to be promulgated through a negotiated rulemaking (reg-neg) process. These levels are to be consistent with the national standards and set cleanup thresholds for the most common hazardous substances found at Superfund sites. Future land use can be considered in determining these cleanup levels and, where appropriate, the level can require cleanup to background levels.

In certain instances, a third method can be used to determine appropriate cleanup levels. Where a national generic cleanup level has not been developed or where modification of an existing level to account for particular characteristics of a site or its surroundings will result in a better application of the protective standard to that site, a site-specific risk assessment may be used to determine an appropriate cleanup standard for that site.

Remedy Selection:

The bill removes the current preferences in the law for treatment and permanence in selecting a remedy. The permanence preference is replaced by the concept of "long term reliability". Treatment, containment, or a combination of the two are considered equally in the remedy selection process. The most appropriate remedial response at a particular site will be based upon the following criteria:

- the effectiveness of the remedy;
- the long-term reliability of the remedy;
- the risk posed to the community in undertaking the remedy;

- 4. the acceptability of the remedy to the community; and
- the cost (under current law, cost may be considered only after the other remedy selection criterion have been satisfied.)

Removal Actions:

Removal actions are short-term responses to abate immediate threats from hazardous substances. They are subject to time and monetary limitations, and are not required to meet any specific level of cleanup. The Administration is interested in greatly increasing the number of removal actions. Its goal is to expand the removal authority thereby doing entire site cleanups under the removal program.

In order to expand EPA's removal authority, the bill:

- increases the monetary cap on any removal action from \$2,000,000 to \$6,000,000 per site; and
- increases the maximum completion time for the removal action from 12 months to three years.

It also removes the current requirement that any removal action be consistent with the final remedy. Instead, the removal must not be inconsistent with any remedial action that has been selected or is anticipated.

The bill requires EPA to provide notice of an anticipated removal action and allow for public comment where removal actions are expected to take longer than 6 months. For removal actions of shorter duration, there are no provisions for community involvement in the bill.

TITLE VIII -- INSURANCE

This title establishes a dedicated trust fund (separate from the Superfund Trust Fund) to be used to encourage settlements at Superfund sites and reduce the current litigation between insurance companies and PRPs.

In brief, the title:

o Requires insurance companies to pay a tax (intended to be \$500 million but as yet unstated) into the "Environmental Resolution Insurance Fund." The specific method for application of this tax has yet to be determined;

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- o The dedicated fund will be used to make settlement offers to "eligible parties" (those with arguable insurance coverage) at "eligible sites" (an NPL site or a site subject to a removal action);
- o Once the amount of potential insurance liability at a site is determined, the trustee of the fund offers to settle for 20%, 40% or 60% of that amount. The percentage is determined by reviewing current trends in litigation between PRPs and insurance companies in the state. In the ten states where the case law most favors the insurance company, a 20% settlement will be offered. In the ten states where the case law most favors the insured, a 60% settlement will be appropriate. In the remaining 30 states, a 40% settlement will be in order:
- o If a PRP accepts the settlement, it must waive any future claims against any insurer for Superfund costs. (Note: A PRP must accept or reject a settlement offer from the trust fund for all its Superfund liability. It can't accept the settlement for one site and sue its insurer over other sites.)

TITLE IX -- TAX

Title IX is referred solely to the Committee on Ways and Means. It extends the current Superfund taxes through 2000. It also contains a place holder for the insurance settlement fund tax, but the details of that tax are not yet available.

RECENT ADMINISTRATION CHANGES TO H.R. 3800

The following is a summary of recent changes made to H.R. 3800 supported by the Administration. These changes are the result of continuing negotiations by EPA and other Administration officials. Many of these changes were incorporated into an amendment in the nature of a substitute to H.R. 3800 adopted recently by the Energy and Commerce Committee.

TITLE I -- COMMUNITY PARTICIPATION

The Administration's most recent changes to H.R. 3800 remove the current requirement that TAG recipients match 20% of the grant amount. It also allows some grants to be awarded to "enhance [the recipients'] participation in consensus-based rulemaking". These non-site-specific grants are limited to \$100,000.

It also requires that citizens be afforded the opportunity for public meetings throughout the remedial process. Public meetings must be offered before or during each of the following:

- o the health assessment and preliminary assessment;
- o the Remedial Investigation and Feasibility Study (RI/FS);
- o the announcement of the selected remedial action; and
- o the completion of the work plan for the RI/FS, Remedial Design and Remedial Action (RD/RA).

As in the original bill, the Administration's recent proposal requires each state to establish a Citizen Information and Access Office as an "independent special purpose unit of the government" to act as a clearinghouse for Superfund related information. The proposal, however, requires EPA to establish CIAOs in any state which does not establish one within 18 months of enactment.

Environmental Justice:

As stated previously, H.R. 3800 proposes to amend the Hazard Ranking System to consider risks posed to minority and low income communities from all sources of exposure, not just the site proposed for listing. Recent Administration-supported changes to Title I clarify Hazard Ranking System modifications by requiring EPA to:

- o group facilities together where more than one facility results in hazardous substances exposures to the same population;
- consider any history of exposure to hazardous substances in the community regardless of the source; and
- o take into account the use of land or waterways for subsistence, religious, spiritual or cultural practices where such use results in additional exposure to hazardous substances.

In addition, the proposed changes would require EPA to identify 5 facilities in each EPA region (50 in all) that are likely to warrant inclusion on the NPL because of these changes to the ranking system. These sites must be evaluated for NPL listing within 2 years of enactment.

TITLE II -- STATE ROLE

The Administration supports significant changes to Title II designed to eliminate many of the provisions contained in H.R 3800 preempting state environmental laws.

The new Administration proposal establishes a process by which qualified states could, through contract or agreement with EPA, be authorized to perform Superfund work. Specifically, states may:

- o perform preremedial activities such as the Preliminary Assessment and Site Evaluation (PA/SE);
- direct remedial activities including remedy selection;
 and
- o enforce the requirements of the Act.

The proposal sets out a two-tier process for a state to obtain Superfund authority. A state may receive authority over preremedial activities by meeting criteria to be established thorough EPA rulemaking. To receive authorization for remedial activities, the liability allocation and settlement provisions of the bill, and enforcement, a state would be required to demonstrate compliance with criteria set forth in the Administration's proposal.

TITLE IV -- LIABILITY AND ALLOCATION

Recently, the Administration has supported significant changes to the liability provisions of H.R. 3800. These changes include altering the threshold levels for exemption from Superfund liability and changing the cost allocation program.

Exemptions from Superfund Liability:

- o De Micromis Municipal Solid Waste and Municipal Sewage Sludge Exemption: Would exempt from liability generators or transporters of MSW or MSS if the generator or transporter of the waste is:
 - the owner, operator, or lessee of residential property;
 - (2) a small business; or
 - (3) a small non-profit organization.

(In the original H.R. 3800, this exemption was based on quantity -- any generator or transporter of less than 500 pounds of MSW/MSS per site was exempt.)

- o De Micromis Hazardous Waste Generator/Transporter Exemption: Would exempt from liability any generator or transporter of less than 55 gallons or 100 pounds of hazardous waste per site (increased from ten pounds or 10 liters in the original bill) unless the hazardous waste contributes significantly to the cost of cleanup;
- o Inheritance or Bequest Exemption: Would exempt from liability any person who is liable solely as an owner if the person obtained the property through inheritance or bequest and meets the criteria set forth in the substitute.

H.R. 3800 contains a provision exempting the United States from liability as an owner of federal land on which a private party engaged in mining activities which led to the release of hazardous substances. The Administration supports deleting this provision.

Lender Liability:

Superfund excludes from liability any person who, without participating in the management of a facility, holds indicia of ownership primarily to protect a security interest. This is what is known as the lender liability provision. In 1990, the 11th Circuit Court of Appeals issued the Fleet Factors decision. Despite the exemption contained in Superfund, the decision discusses the possibility of holding lending institutions liable under Superfund if the lender participated in the management of the facility to such a degree that it was no longer acting "primarily to protect his security interest". This decision sent panic through the lender and small business communities even though the lender in Fleet Factors was very much involved in the day-to-day decision-making at the company.

Claims that the Court misinterpreted congressional intent with respect to Superfund liability, and that the <u>Fleet Factors</u> decision is making it more difficult for already-pressed small businesses to secure financial backing, caused EPA to issue a final rule outlining the steps which a lending institution can take and still be presumed to be primarily protecting his security interest. This rule was finalized in April, 1992.

Recently, a three judge panel of the United States Court of Appeals for the District of Columbia Circuit invalidated the regulation. H.R. 3800 addresses this action by adding the following:

This section confirms, without limitation, authority to promulgate regulations to define the terms of this Act as they apply to lenders and other financial services providers, and property custodians, trustees, and other fiduciaries.

The new Administration proposal would tackle lender liability in a different manner. It states that, from the moment of enactment, the lender liability rule issued by EPA would be deemed to have been validly issued under Superfund.

Allocation of Responsibility:

The Administration now supports the creation a new section of Superfund, Section 130, entitled "Allocation at Multiparty Facilities". As the title implies, the allocation process is intended to apply only to multiparty sites. It would not be used at single party sites, since all liability falls on one party, or at federal facilities.

The proposed allocation process is set out below:

- Within 60 days of commencement of the remedial investigation, EPA must notify all known potentially responsible parties that they are required to participate in the allocation process. Under H.R. 3800, participation is optional;
- o The parties choose an allocator to make the allocation determination;
- o PRPs have 60 days from the date facility information is made available to identify other PRPs to EPA;
- EPA must provide expedited settlements to qualifying parties; and
- o Within 18 months, a final allocation determination is made.

As in H.R. 3800, any party that refuses to accept the allocated share would face stiff disincentives for such refusal. These include strict, joint and several liability for any remedial costs not covered by the settling parties and responsibility for the orphan share. Unlike the bill, the government would be bound by the allocation unless it can prove bias, fraud or unlawful conduct on the part of the allocator, unless the allocation was substantially and directly affected by procedural error, or unless "no rational interpretation of the facts before the allocator, in light of the factors required to be consider, would form a reasonable basis" for the allocation.

TITLE V -- REMEDY SELECTION

General:

The bill requires national goals for the protection of human health and the environment to be promulgated as part of a negotiated rulemaking. In H.R. 3800, it is assumed that these goals would result in the establishment of two ranges of cumulative human health risks; one for chemical carcinogens and another for non-carcinogens. The Administration now supports requiring the promulgation of single numerical risk numbers, rather than risk ranges, for chemical carcinogens and for non-carcinogens. These goals must be met at all Superfund sites unless technically infeasible or unreasonably costly.

The Administration also supports replacing the generic cleanup remedies envisioned in H.R. 3800 with methodologies to be used to determine protective concentration levels in soil and groundwater for 100 contaminants most commonly found at Superfund sites. These methodologies would also determine the appropriate uses of risk assessments under the Superfund program.

Remedy selection could be based on reasonably anticipated future land use. Criteria to be considered include: current land use on the site and surrounding properties; proximity to sensitive populations or ecosystems; land use development patterns; zoning; and potential for economic redevelopment.

Application of State Law:

H.R. 3800 would allow any promulgated state standard "specifically addressing remedial action" to be applied. EPA now supports allowing states to repromulgate standards that are not currently "applicable" if the standards are promulgated through a public process and the state demonstrates that they are consistently applied at state remedial action sites.

Remedy Selection:

Under H.R. 3800, the most appropriate remedial response at a particular site would be based upon the following criteria:

- 1. the effectiveness of the remedy;
- the long-term reliability of the remedy;
- the risk posed to the community in undertaking the remedy;
- 4. the acceptability of the remedy to the community; and
- 5. the cost.

Because of some confusion on the issue, the Administration has recently clarified that all five criteria are to be equally balanced. Thus, cost is placed on an equal footing with the other criteria.

TITLE VIII -- INSURANCE

As a result of negotiations which occurred following the introduction of H.R. 3800, the Administration supports a revised insurance title. Some of the more significant changes supported by the Administration include:

- o renaming the insurance trust fund the Environmental Insurance Resolution Fund (EIRF);
- o specifically identifying the percent of potential insurance liability recovered in various states. Under the proposal, California, Colorado, Georgia, Illinois, New Jersey, Washington, West Virginia and Wisconsin would fall into the 60% recovery category. States in the 20% category are: Florida, Maine, Maryland, Massachusetts, New York, North Carolina and Ohio. All other states would receive 40% recoveries; and
- o termination of the EIRF if a minimum 85% participation level by eligible parties is not attained.

H.R. 3800, THE SUPERFUND REFORM ACT OF 1994, AND ISSUES RELATED TO REAUTHOR-IZATION OF THE FEDERAL SUPERFUND PROGRAM

THURSDAY, JUNE 9, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER RESOURCES AND
ENVIRONMENT,

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 2167, Rayburn House Office Building, Hon. Douglas Applegate

(chairman of the subcommittee) presiding.

Mr. APPLEGATE. I would like to welcome you to the first in what is likely to be a series of hearings on H.R. 3800, the Superfund Reform Act of 1994, and issues related to the cleanup of hazardous substances. I thank all of you for being here, and particularly the EPA Administrator Carol Browner, and particularly, if I could say, as to her condition. Unfortunately, Ms. Browner has something that all of us may have had at one time, you get from children; it is pink eye, and she is going to have to go back to see her doctor, and we hope that you get that over with soon. I know how that is. I had it as a child.

But additional hearings will be held to receive other testimony. Ms. Browner is accompanied by Alicia Munnell, who is Assistant Secretary for Economic Policy for the U.S. Department of Treasury.

The Comprehensive Environmental Response, Compensation, Liability Act of 1980, commonly known as Superfund, established a comprehensive program to set priorities to clean up the worst existing abandoned or uncontrolled hazardous waste sites. The law makes those parties responsible for the hazardous waste sites pay for cleanups wherever possible and provides for a hazardous waste trust fund, the Superfund, to perform remedial cleanups in cases where responsible parties cannot be found or otherwise be held accountable.

Superfund is an outgrowth of hazardous waste horror stories of the late 1970s. Love Canal, a community in Niagara Falls, New York, was evacuated after hazardous waste buried over a 25-year period contaminated the groundwater and surrounding soils. In response to Love Canal and other instances, Superfund was enacted during the lame duck session of the Carter administration as a \$1.6 billion, five-year program to address our Nation's hazardous

waste problems.

The original program was inadequate, and Superfund was reauthorized in 1986 for an additional 5 years at \$8.5 billion. Superfund was extended for 3 years, through fiscal year 1994, by the Omnibus Budget Reconciliation Act of 1990. The taxes which constitute the

trust fund were extended through the end of 1995.

We begin today what we chose not to do in 1990; that is, the reform of Superfund. However, this is going to be no small task. Anyone working on Capitol Hill quickly realizes it is far easier to kill legislation than it is to pass it, and Superfund may be easier to kill than for most, for the Superfund program has always been surrounded by controversy and strong feelings, and in fact it simply has not worked.

When originally enacted, Superfund was intended to address this country's 400 worst abandoned hazardous waste sites. Now, 14 years later, nearly 1,300 sites are listed on the national priorities list, and only 59 have been cleaned up sufficiently to warrant re-

moval from that list.

While Administrator Browner will also discuss the large number of cleanup activities under way, I don't believe that anyone in this room would argue that sufficient or satisfactory progress has been made. We need to make Superfund work faster while still assuring the protection of human health and the environment. A reformed Superfund must also assure that affected citizens have a voice in the selection of a clean up remedy throughout the process, not just

once a remedy has been selected.

Finally, Superfund must devote a greater portion of its resources to cleanups rather than in pockets to resolve lawsuits and dispute among government, industry and local interests. While the Superfund program has engendered contention and animosity in the past, the reauthorization process, this Congress, has been different. Beginning with EPA's National Advisory Council on Environmental Policy and Technology, and continuing with the National Commission on Superfund, this reauthorization process has been characterized by a new spirit of cooperation.

Large industry, small business, environmental groups, public interest groups and others have put aside many of their previous differences, each acknowledging that a new Superfund is better than

the status quo.

I do not mean to represent that all perspectives or opinions on Superfund reform have been met. This subcommittee will allow divergent points of view to be presented. However, if Superfund reform is to occur in this Congress, we should be focusing on those areas where true compromises and reform are possible, and not upon what any one of us might consider as a perfect bill.

It will not be easy to accomplish Superfund reauthorization this year. We have a full legislative agenda and a limited number of

days remaining in this Congress.

However, Superfund reauthorization is a priority for me as it is for Chair Mineta. And I will do my best to see that Superfund re-

authorization is concluded before this Congress adjourns.

I would remind my colleagues and those of you present in the hearing room that the committee still has not completed its work on the Clean Water Act reauthorization. This hearing should not be viewed as an abandonment or delay in that effort. Rather, in

light of the Energy and Commerce Committee having completed its work and the remaining few legislative days, I believe that it is ap-

propriate to conduct this hearing now.

Members will have the opportunity to discuss Superfund issues with adequate time for the bill's consideration. Members should expect that clean water legislation will be reported by the committee before Superfund.

Once again, I thank each of you for coming. I would now like to turn to my distinguished colleague, the gentleman in New York and Ranking Minority Member of the committee, Sherry Boehlert.

Mr. BOEHLERT. Thank you, Mr. Chairman.

I would like to begin this morning's hearing by thanking you for taking up the issue in a timely manner. No statute administered by the Federal Government has been more roundly criticized than Superfund. The time for Superfund reform is long overdue, and I am hopeful we can make these needed reforms in a very timely manner.

I would also like to welcome back Administrator Browner for her weekly visit to our subcommittee. The insights you provided on the reauthorization of the Clean Water Act during our May 24th hearing were very helpful. Like the Clean Water Act, the reauthorization of the Clean Water Act,

tion for Superfund occurs this fall.

As a county executive and Member of Congress, I have dealt firsthand with the frustrating and burdensome requirements of Superfund. I represent those citizens most often noted when the

failures of Superfund are discussed.

In a search for PRPs following the cleanup of the Ludlow Superfund site which is in my district, constituents of mine were notified they were to contribute thousands of dollars toward this cleanup because pizza boxes from their restaurant were found in the Ludlow landfill. I found that rather ludicrous.

I was offended then and I am frustrated now that we have in place a law that is not doing what it was intended to do, and is unfairly and unnecessarily burdening, too many changes needed. H.R. 3800 is an important step toward making the Superfund pro-

gram more efficient and more equitable.

In the years following Love Canal and the enactment of Superfund, both the Federal Government and American business have spent billions of dollars on Superfund. Unfortunately, far too much of that money has gone for litigation and other transaction costs.

Superfund resources must be used to clean up toxic wastes that are threatening public health and the environment without lining

the pockets of attorneys.

We must move from costly litigation associated with allocating liability to actually cleaning up the 1,300-plus Superfund sites now identified. I believe today's hearing will take us a step closer to that objective.

I look forward to your testimony.

Thank you, Mr. Chairman.

Mr. APPLEGATE. Our distinguished Chairman of the full committee, Chair Mineta.

The CHAIR. Thank you very much, Mr. Chairman.

And I want to welcome to our committee Ms. Browner and Ms. Munnell for their willingness to come on short order to this hear-

ing. I appreciate it very, very much.

For many of us, the recent efforts of the Energy and Commerce Committee were a bit like "The Perils of Pauline." We never knew from day to day whether the effort to find a compromise reform package for the Superfund program would succeed or fail. We were, however, pleasantly surprised when the effort actually produced a compromise bill.

Now, our immediate task on the Public Works and Transportation Committee is to produce an acceptable clean water reauthorization. But it is also very clear that once we have accomplished that, we will want to turn immediately to the task of a Superfund

reform bill.

Now, this first day of hearings on Superfund will give us a chance to hear the administration's views on the compromise. And I want to commend our Chair, Mr. Applegate, and our Ranking Republican, Mr. Boehlert, for taking this opportunity to schedule this hearing.

Now, as a result of these and subsequent hearings, we hope to be in a position to move very promptly into Superfund after com-

pleting that clean water reauthorization markup.

I would just add that in my view, the real test of Superfund reform will be whether the very diverse coalition of interests which came together to support this compromise over the past several months can stay together and can continue to support the com-

promise they helped create.

Now, these interests have very rarely agreed in the past on anything regarding Superfund, and as a result reform of Superfund seemed impossible. If all of these diverse interests can stay together behind the compromise, then I think we have a chance of enacting a bill. If, however, they start looking at how they can do a little better at somebody else's expense, then the compromise is likely to unravel and we are likely to remain then with existing law.

So it seems to me that at the Energy and Commerce Committee, that there has been a stepped-up level of activity in terms of trying to inform our Members, and me included, about some of the shortfalls or what was not taken care of at the Energy and Commerce Committee. In a way, given the house of cards around which this compromise was built, I don't want to be the dumping ground for every person who was not happy, not getting their amendments passed at the Energy and Commerce Committee.

So if this bill is to be enacted, then we may want to consider call-

ing it the lobbyists' self-restraint act of 1994.

Thank you very, very much.

Mr. APPLEGATE. Very well put, Mr. Chairman.

The distinguished Ranking Member of the Public Works Committee, Mr. Shuster.

Mr. Shuster. Thank you very much, Mr. Chairman.

I agree that enormous progress has been made to develop a compromise. Surely if anything is broke in Washington, it is Superfund. The Rand study indicated that cost of litigation and ne-

gotiation consumes somewhere between 21 and 88 percent of the total amount spent on cleanup.

While I don't agree with everything President Clinton says, I surely agree with his statement that we need to use Superfund to

clean up pollution for a change, not just to pay lawyers.

Horror stories have been reported. They are absolutely legion. A butcher shop owner held liable because of glue on boxes. A formal wear rental service in Tulsa held responsible to clean up a local Superfund site because they paid somebody \$14.90 to haul trash to a Superfund site. A citizen in Wisconsin was fined for having disposed of a bag of dog chow. The Boy Scouts were named. Superfund is a series of horror stories.

Supreme Court nominee Stephen Breyer has written about the so-called dirt-eating rules under Superfund as examples of unreasonable risk regulation and tunnel vision. One could go on and on

and on. This is broke and we need to fix it.

This committee I think has a responsibility to not only take the

compromise but see if we can improve it.

In that spirit of trying to achieve, not perfection, but the best we can hope to accomplish. I think we should move forward vigorously.

Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Shuster.

Mr. Hayes.

Mr. HAYES. I am not going to make any opening remarks unless Norm says I can.

Mr. APPLEGATE. And I assume he said you can't.

Mr. Clinger.

Mr. CLINGER. No thank you, Mr. Chairman.

Mr. APPLEGATE. All right. We are moving right along here.

Mr. Valentine.

Mr. VALENTINE. Mr. Chairman, I have the permission of the Chairman of the full committee to speak briefly. I want to just say welcome, again, to Ms. Browner, who brings us wisdom and solutions to problems, and to thank the Chairman for arranging for this hearing.

This Superfund, based on what my constituents say to me, ranges anywhere from a royal mess to an absolute disaster. We have to change it, we have to make it into something besides the

lawyers' financial benefit act of 1990, or whenever it was.

I welcome this opportunity to be enlightened and pledge my supportive efforts to do a real, real first-class house-cleaning job on this program.

Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Valentine.

Mr. Inhofe.

Mr. INHOFE. Thank you, Mr. Chairman.

I think it is interesting that each person who has talked up to now in the opening statements has used the term "horror stories." And I hope, Ms. Browner, that in your opening remarks you address some of these.

Let me just tell you one more. In the tri-State mining area, back in 1936 there was a mining company that was put together and received Federal subsidies for the war effort. It operated until 1944, when the Federal subsidy stopped. Nothing happened with the

mine until 1955, when ownership was transferred to another company for one purpose: It had a \$20,000 loss carried forward. The new owners utilized the tax advantages of the mine but never operated.

In 1990, they were notified by the EPA that they would be a PRP, and the amount would amount to \$40 million. Their total as-

sets were \$500,000 at that time.

They have gone around and around, not knowing. It kind of reminds me a little bit of a book that every person in bureaucracy should read. It is called The Hiding Place. During World War II, where the author was hiding up in Holland, hiding the Jews from the Nazis, the big fear was banging on the door, knowing they would all perish. That is the fear that businesses and industries have around the country today of the banging on the door, saying, This is the EPA, we are going to put you out of business.

The company made an offer in this case of \$450,000 and waited and waited, and nothing has happened. They do not know from day-to-day whether or not they will be totally out of business. The joint and several aspects as well as the retroactivity are things I hope you address during your comments. And I would like to have you

during your comments answer three questions.

First of all, do the stories you have heard up here, and particularly this one, bother you? And number two, if so, do you propose to do something about it? And number three, if so, what?

Mr. APPLEGATE. Thank you, Mr. Inhofe.

Mr. Geren.

Mr. GEREN. I have no opening statement, Mr. Chairman.

Mr. APPLEGATE. Mr. Hutchinson.

Mr. HUTCHINSON. No.

Mr. APPLEGATE. Ms. Norton.

Ms. NORTON. Nothing, Mr. Chairman.

Mr. APPLEGATE. Ms. Molinari.

Ms. Molinari. Mr. Chairman, I have no opening statement at this time, only to say that I certainly echo all the sentiments of frustration that have been exhibited by my colleagues up until this

point.

Obviously representing a Superfund site in my own district and having a significant amount of the New York/New Jersey area surrounding my district, it is one that we are really looking forward to working with this administration towards a resolution so that we can finally put these areas to rest and clean up those neighborhoods.

Mr. APPLEGATE. Thank you, Ms. Molinari.

Mr. Lipinski.

Mr. LIPINSKI. I pass.

Mr. APPLEGATE. Mr. Gilchrest.

Mr. GILCHREST. Thank you, Mr. Chairman.

This echo is bouncing back and forth about the horror stories. I would also echo the sentiments of my colleagues that have expressed the frustration in dealing with a sometimes entrenched, seemingly unmovable bureaucracy. I will say—and I have some Superfund sites around the Chesapeake Bay that we are very concerned with and we are working very hard to clean up—I will say, there is some light. We have worked with EPA on some projects

where through a great deal of attention being paid to individuals assigned that responsibility through continued relentless dialogue with all parties involved on a day-to-day basis, we were able to ring out some successes.

One, for example, was a site in the northern part of my district which was the largest asbestos cleanup in the history of the United States. We contacted you when you first came in, people from D.C., Philadelphia, EPA, and everybody involved met numerous times on

the site to discuss the cleanup.

And in this particular bill there is a section that deals with site-specific cleanups, which I think will go a long way toward relieving some of the burdens of the tied-in-knots bureaucracy that these horror stories have related.

But there is, I think—as people work together, this whole reform

of the Superfund act can be successful.

Thank you.

Mr. APPLEGATE. Thank you, Mr. Gilchrest.

Mr. Borski.

Mr. Borski. Thank you, Mr. Chairman.

I want to congratulate Administrator Browner, representives of industry and the environmental community and everybody else who has worked on this compromise bill. This bill shows that when there is commitment to reach an agreement, even when there are significant differences to start with, it can be done.

I also want to note the compromise that was reached on this legislation follows closely the policy recommendations that were contained in the report of our Subcommittee on Investigations and

Oversight, and I look forward to hearing Ms. Browner today.

Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Borski.

Mr. Zeliff.

Mr. ZELIFF. Thank you, Mr. Chairman.

As you know, I have been very much involved in the Superfund program over the past 2 or 3 years, mostly because I have 14 NPL sites in my district, but also because the more I got involved, the more I saw a program not only in dire straits but a law that is

badly in need of reform and is badly flawed.

I look forward to working with you to remedy the situation. I certainly hope we can do it this year. My concern over the situation in New Hampshire led me to establish the New Hampshire task force in 1992. This cross-section of concerned individuals worked for a year both in New Hampshire and here in Washington, working with EPA. The work on our task force was tremendous and a big help in working on different aspects of the program.

In August 1993, we finished up with our findings. I have since converted those proposals into H.R. 4161, the Comprehensive Superfund Improvement Act. I asked Senator Smith to join us and

he agreed to introduce our companion bill in the Senate.

Very briefly, my bill replaces joint and several liability with a binding arbitration process to allocate liability. It allows States to take over sites within their borders, and sets out a new framework for remedial decisions which requires, among other things, a full consideration of future land use.

I would ask, Mr. Chairman, that I be allowed to insert a full summary of my bill into the record today.
Mr. APPLEGATE. Without objection.
Mr. ZELIFF. Thank you, sir.
[The information follows:]

THE COMPREHENSIVE SUPERFUND IMPROVEMENT ACT OF 1994 H.R. 4161

Congressman Bill Zeliff

TITLE 1 -- LIABILITY

1. Elimination of retroactive liability

All liability is removed for parties which legally contributed waste to an NPL site prior to enactment of CERCLA on December 11, 1980. Sites which have remedial action completed by January 1, 1994, that contained waste dumped prior to 1980 will not be eligible for any compensation for response costs. There will be compensation for operation and maintenance costs at all sites with pre-1980 waste.

2. Release of liability for other innocent parties

A. Lenders and Fiduciaries

Lenders and fiduciaries holding title to land on which an NPL site is located, or which may be held liable for costs associated with the cleanup of that site, are exempted. There are safeguards against any exemption of any such party which is found to be responsible for waste distribution.

B. Innocent Landowners

Releases landowners from Superfund liability if they meet the criteria defined in this section after which they will have been deemed to have performed "all appropriate inquiry" under CERCLA.

C. Conservation Easements

Grantees of conservation easements on which an NPL site is located is relieved from Superfund liability considering they had nothing to do with any release of hazardous substances.

D. Site Redevelopers

Individuals who had nothing to do with disposal and who wishes to redevelop a former NPL site, is released from the threat of any future liability claims.

E. Non-negligent Remedial Action Contractors

Clarifies current liability exemption for environmental contractors who are not negligent and did not contribute to the waste.

3. Binding proportional allocation of liability The process of allocation is as follows:

A. Initial Petition

Within 30 days of remedial investigation study, EPA or state will file petition identifying site, PRPs, and summarizing legal and technical issues specific to site. Initial petition will also include name of person appointed by Administrator to be "guardian of the fund."

B. Statement of Parties

Within 30 days of initial petition, all parties may submit statements regarding defenses to liability, additional facts, and any further PRPs (which may be done for up to 120 days of initial petition). Also within 30 days of initial petition, allocation panel may begin requesting information from all parties (who then have 45 days to respond).

C. Initial Publication of All PRPs

Within 6 months of initial petition, allocation panel will publish all PRPs. Allocation panel may add PRPs until final decision is made. Also within that period, allocation panel will name "de micromis" parties, who contributed only a miniscule amount of waste (10 pounds or 10 liters), and who may be released of all liability.

D. Advocacy Papers

Within 30 days of publication, all parties may submit papers outlining how they propose liability determination and liability allocation should be done. Parties will also have this opportunity after the allocation panel's first report.

E. Allocation Reports

Within 90 days of publication, allocation panel issues report specifying on what basis it will allocate liability. Following second round of advocacy papers (above), allocation panel issues decision on liable parties and allocation of responsibility. Any PRP may request a hearing on these determinations. Allocation panel has discretion to honor that request. For period between filing of initial petition and 18 months following that filing, allocation panel may release any party deemed not liable from all future liability at site.

F. Orphan Share

Any party may submit evidence identifying one or more of liable parties whose share should be assigned to orphan share. Following receipt, allocation panel will assign orphan share.

G. Final Binding Allocation Decision

Within 18 months of initial petition filing, allocation panel makes final decision (which is binding), based on the following factors: (1) degree to which each party's contribution can be distinguished; (2) amount of hazardous substances contributed by each liable party compared to total amount of waste at site; (3) degree of toxicity of substances contributed by each party; (4) degree of involvement of each party in generation, treatment, storage, or disposal of waste; (5) degree of care exercised by each party; (6) degree of cooperation of each party with government officials in prevention of harm to public health; (7) weight of evidence as to the liability and the appropriate shares of each liable party; (8) any other factors deemed appropriate; (9) ability to pay.

H. De Minimis Settlements

As part of final decision, allocation panel identifies all parties which contributed less than 1.0% of total waste. These parties may settle with EPA based on: EPA estimate of total site cleanup cost multiplied by de minimis party share, plus a premium to reflect the benefit of early and complete resolution of liability. De micromis parties (less than 100 pounds or 100 litres) are exempted.

4. General Provisions

- Requires a release of evidence by EPA to PRPs if requested, which
 details the basis upon which EPA made their decisions regarding
 liability at a site.
- Provides for contribution protection for parties which settle with EPA from any further cost recoveries by third parties.
- Allows "assurances of no enforcement action" for owners of contiguous parties who were not owner/operators at the site.

TITLE 2 -- STATE IMPLEMENTATION

1. State Authorization

States are authorized to carry out response actions and cost recoveries following approval from EPA and entering a contractual agreement with EPA. The State is not mandated to take on the responsibility of Superfund, nor is it required to address every NPL site within its borders.

A. Promulgation of Regulations

Within one year of enactment of this legislation, the Administrator (of EPA) will issue regulations to determine a State's eligibility for authorization. The State is deemed eligible if the Administrator determines that "the State possesses the legal authority, technical capability, and resources necessary to conduct response actions and enforcement activities in a manner that is substantially consistent with this Act and the National Contingency Plan...."

B. Authorized Use of Fund

States are authorized to receive funding from the Fund for response actions. The amount authorized takes into account the number and financial viability of all PRPs, and is limited to the amount necessary to achieve a level of response that is not more stringent than required under this legislation. Specific regulations will be promulgated within one year by the Administrator, in consultation with the States.

- States must assure payment of a 10% cost share for response actions (except retroactive claims).
- States may retain 10% of all cost recoveries for use in its hazardous cleanup response program.

C. Federal Oversight

EPA is allowed periodic review of State programs to determine that response actions selected are consistent with this Act, monies from the Fund are being properly used, and the State's cost recovery efforts are conducted in accordance with the contract. EPA may not, at any time, modify any remedial decision of a State.

The EPA may withdraw State authorization and seek enforcement in Federal court (after 60 days notice) if a State violates its contract of authorization with EPA. Any withdrawal or approval of authorizations are subject to public comment. Finally, if a State chooses to implement response actions which are more stringent than under this Act, they are solely responsible for the cost of any additional costs.

TITLE 3 -- REMEDY SELECTION

1. Immediate Risk Reduction Measures (IRRMs)

The first step at all sites should be to minimize and prevent, to the maximum extent possible, any actual and imminent and substantial endangerment to public health. EPA or the State will have the authority to draw money from the Fund to abate the danger by taking such actions as: removing waste from barrels, tanks, or lagoons; providing alternative water supplies; preventing discharges to surface waters or groundwaters; installing fencing; or instituting other institutional controls (this is *not* an exclusive list).

- The IRRM must be conducted in the most cost-effective manner.
- The IRRM will be performed by the State or the EPA as soon as possible; but not later than 60 days after NPL listing. IRRMs are also allowed at a later date if new or changed conditions warrant.

2. Site Scoring

The EPA or State (the lead agency) then scores the site based on existing conditions after the IRRM is completed. Thus, the scoring is based on residual risk. If residual risks score high enough, the site is "listed." (Prior conditions are not considered in scoring)

3. Prepare a Long-Term Response Plan (LTRP)

The EPA or State will then prepare a LTRP, which includes four components (see below). PRPs may be given the opportunity to prepare the LTRP, and the lead agency may be able to expedite the LTRP if it determines a standardized remedy satisfies the selection criteria.

A. Site Characterization

Type, nature, and extent of contamination, including location(s) of source(s). This will be more focused than the current RI process and must be completed within twelve months of listing.

B. Risk Assessment

Risk assessment defines who is at risk, what they are at risk of, and the likelihood and degree of the risk. Risk assessment is performed at the same time as the Site Characterization and must be completed within twelve months of listing.

C. Community Advisory Council (CAC)

The CAC investigates current and reasonably expected future uses of the site, and affected off-site areas of resources, and determines the community's desire(s) for the site and the potentially affected resources. The CAC's report is also prepared within twelve months of listing. (consultation rights but no veto power)

D. Response Option Identification

Following completion of steps A, B, and C, and earlier if possible, there will be a three month period in which to develop the range of possible response actions and to conduct a cost/benefit analysis on each category of action:

- Containment (permanent or not while awaiting new technology)
- Remediation
- Monitoring
- Delisting (no further action)

The CAC, PRPs, and other interested parties would then inform the lead agency of their preferred option(s).

4. Long-Term Response Plan Selection

EPA or the State selects a long-term response or combination which achieves an acceptable level of residual risk reduction (the "cleanup goal"), taking into account such factors as future site uses, cost/benefit considerations, and economic impact. The selected LTRP may include monitoring, containment, institutional controls such as groundwater management zones (GMZs), natural attenuation, and active remediation. ARARs and preference for permanence are eliminated.

Response is selected by lead agency, based on review of the LTRP and
input from CAC, PRPs, and the general public. The lead agency shall
consider, but is not bound by, the recommendations of the CAC,
PRPs, or other parties. ARARs are no longer a consideration, and the
preference for permanence is also eliminated.

5. Transition Provisions

Existing sites will fall into a three-tier transition process: if an existing NPL site has not yet conducted an RI/FS, then Title III of this Act is executed in full. If an existing NPL site is at some stage between the RI/FS and the execution of the RA contract, then the parties at the site must declare within 30 days of enactment their desire to opt in to this Act and begin the new remedial process with a new risk assessment, as defined in this Act. The final tier allows for any site at any stage following the execution of the RA contract to restart the process at the risk assessment stage of this Act if the lead agency determines it would be technically and economically feasible.

6. General Provisions

- a) Appeal process for IRRM issues: standard of review is arbitrary and capricious, abuse of discretion, or not in accordance with law. There is a seven-day limit on appeals filings in an IRRM. Appeal process for LTRP: de novo review. All appeals are heard by the US District Court where the site is located.
- b) Appeal process on LTRPS: if no appeal or lose appeal, or appeal results in modifications, the PRPs must implement LTRP within 30 days of EPA's decision date or the court's decision date.
- EPA/State may have periodic review every 5 years; may trigger a supplemental LTRP, which includes all the process steps for an LTRP.
- d) Site is delisted once cleanup goals have been met, which includes delisting while O&M or monitoring are still being conducted.

TITLE 4 -- FUNDING

- 1. Reauthorization of tax authority
 Allows for a straight reauthorization of current taxes relating to Superfund.
- 2. <u>Authorizes appropriations from general treasury</u>
 For \$250,000,000 per year for five years (no change from current).
- 3. New Funding Assessments on corporations with taxable income above \$2,000,000 will be increased to 0.24%. A new fee on insurance companies will also go into effect (this provision is currently being drafted). Funds collected which are a result of these increases will be placed in a fund dedicated solely to cleaning up sites prior to Superfund being enacted.
- 4. <u>Sunset of some provisions</u>
 Any increases will sunset after five years.

Mr. Zeliff. My legislation represents a new way of thinking of Superfund. It is a grassroots solution. It represents constructive change to a program that is so flawed that no tinkering will ever

be effective.

The one provision of my bill receiving the greatest amount of attention these days is the elimination of retroactive liability. For years this has been part of EPA's Superfund sacred cow and there has never been discussion of the ups and downs of this inherently un-American way of assigning liability. I just can't believe this process. I know you may or may not be sympathetic. I look forward to your comments.

Currently, if a party disposes of waste before Congress enacted this law, they will be held and have been held liable for the costs of cleaning that waste up, even if they were abiding by every law on the books at that time. I think this is absolutely incredible. The ripple effect of this provision crosses into every aspect of

Superfund.

Retroactive liability is part of the entrenched bureaucracy at EPA that is so absolutely resistant to change, and demands a new approach. But yet if you travel across this country to NPL site after NPL site and talk to people caught up in this Superfund web, they will tell you what the real problems are. They almost always point to retroactive liability and how it permeates every aspect of the site.

Another part of the sacred cow is joint and several liability which allow EPA to hold one party liable for the entire costs of the site regardless of how much waste they may have actually contributed. In the real world, EPA comes to a site and accuses the wealthiest waste contributor jointly and severally. Aside from the fact that they are violating a clause in the Constitution known as "innocent until proven guilty," that wealthy party is encouraged to do their own investigation and opens dozens of lawsuits against everyone else they can find that contributed to the waste.

The time has come for a full and open discussion. EPA and others can no longer say, "Hands off" to liability. Elimination of retroactive liability is feasible and it can be done without affecting the "polluter pays" concept or jeopardizing any of the goals of

Superfund.

I urge my colleagues to join my call for open discussion and listen for themselves to what is really happening outside the Beltway. I guarantee them the reform is not as cut and dry as some would make them believe.

I have been out there on the sites, every one of my sites in the district. I have listened and observed. I have worked every NPL

site in my district.

As all of us here know, it is a very different world outside the city. Nowhere have I found Washington so totally out of touch as

they are with Superfund.

The bulk of the proposal which passed the Energy and Commerce Committee a few weeks ago is a patchwork of inside-the-Beltway special interest deals which does not represent the interests of the groups outside Washington. Plain and simple it is an insider bill filled with different agendas to protect the interests of a handful of businesses and insurers involved in the negotiations, which I might add we closed to the great majority of Members here today.

The Energy and Commerce bill does not represent the type of change that I and others feel is necessary. As the old saying goes, "all it does is rearrange the deck chairs on the Titanic."

In conclusion, Mr. Chairman, I call on the Members of the committee to listen to all sides of the debate, not just the sides rep-

resented here in Washington.

There are two very different Superfund worlds out there. I promise you, it is too important to the health of our citizens, the health of our small towns and the health of our national economy to let

this program go without fundamental reform this year.

Again, we can talk about a compromise and how great it is, but if we talk about nine flawed law—and it is flawed on two premises, retroactive liability and joint and several—and we don't address and answer those two clauses, then I don't think we have a good compromise.

Thank you, Mr. Chairman.

[Mr. Zeliff's prepared statement follows:]

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OPENING STATEMENT OF HON. BILL ZELIFF Water Resources and Environment Subcommittee June 9, 1994

I want to thank you, Mr. Chairman, for calling this hearing today on Superfund. As you know, I have been very involved with the Superfund program over the past two or three years ... mostly because I have 14 NPL sites in my district, but also because the more I got involved, the more I saw a program that was in dire straits. I look forward to working with you to remedy this situation, Mr. Chairman, and I sincerely hope we can get it done this year.

My concern with the situation in New Hampshire led me to establish the New Hampshire Superfund Task Force in July of 1992. This wide cross-section of concerned groups and individuals worked for over a year both in New Hampshire and here in Washington studying the different aspects of the program.

In August, 1993, they presented me with their findings. I have since converted those proposals into H.R. 4161, the "Comprehensive Superfund Improvement Act." Senator Smith has introduced its companion in the Senate. Very briefly, my bill replaces joint and several with a binding arbitration process to allocate liability, allows States to take over sites within their borders, and sets out a new framework for remedial decisions which requires, among other things, a full consideration of future land use. I would ask, Mr. Chairman, that I be allowed to insert a full summary of my bill into the record.

I am most proud of this legislation because it represents a new way of thinking in Superfund -- it is a GRASSROOTS SOLUTION. H.R. 4161 represents fundamental, comprehensive, and constructive change to a program that is so flawed that no tinkering or minor reforms will ever be effective.

But the one provision of my bill receiving the greatest amount of attention these days is its elimination of retroactive liability. For years this has been part of EPA's "sacred cow" of Superfund, and there has never been a discussion as to the ups and downs of this inherently un-American way of assigning liability. Currently, if a party disposed of waste before Congress even enacted the law, they can be held liable for the cost of cleaning that waste up, even if they were abiding by every law on the books at that time. The ripple effect of this provision crosses into every aspect of Superfund.

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Retroactive liability is part of the entrenched bureaucracy at EPA that is so absolutely resistant to change and demands a new approach. But yet, if you travel across this country to NPL site after NPL site, and talk to the people caught in the Superfund web, they will tell you what the real problems are. I guarantee you that they will almost always point to retroactive liability and how that permeates every single aspect of a site.

Another big part of EPA's liability sacred cow is joint and several liability -- which allows EPA to hold one party liable for the entire cost of a site, regardless of how much waste they may have actually contributed. In the real world, EPA comes to a site and accuses the wealthiest waste contributor jointly and severally. Aside from the fact that they are violating a clause in the Constitution known as "innocent until proven guilty," that wealthy party is then encouraged to do their own ivestigation and open dozens of lawsuits against anyone else they can find who contributed waste.

The time has come for a full and open discussion. EPA and others can no longer say "hands off" when it comes to liability and how it effects everything from the taxpayer's wallet to the speed of cleanup at our hazardous waste sites. An elimination of retroactive liability IS feasible, and it CAN be done without affecting the polluter pays concept or jeopardizing any of the goals of Superfund.

I urge my colleagues to join my call for open discussion, and listen for themselves to what is really happening outside the beltway. I guarantee them that reform is not as cut-and-dry as some would have them believe. I have been out there at the sites listening and observing. I have walked every NPL site in my district. As all of us here know, it's a very different world outside of this city, and nowhere have I found Washington so totally out of touch than with Superfund.

The bulk of the proposal passed out of Energy and Commerce a few weeks ago is a patchwork of inside the beltway special interest deals which does not represent the interests of groups outside Washington. Plain and simple, it is an insider bill filled with different agendas to protect the interests of a handful of big businesses and big insurers who were involved in the negotiations ... which, I might add were closed to the great majority of Members here today.

The Energy and Commerce bill does not represent the type of fundamental change that I, and many others, feel is necessary. As the old saying goes, all it does is "rearrange the deck chairs on the Titanic."

In conclusion, Mr. Chairman, I call on the members of this Committee to listen to all sides in this debate, not just the sides here in Washington. There are two very different Superfund worlds out there, I promise you. It is too important to the health of our citizens, the health of our small towns, and the health of our national economy to let this program go without fundamental reform this year.

Thank you once again Mr. Chairman.

Mr. APPLEGATE. Thank you.

Mr. Menendez.

Mr. MENENDEZ. Thank you, Mr. Chairman.

New Jersey certainly has a great concern about Superfund, particularly my district, and I am looking forward to listening to the administrator's testimony, particularly in two areas. One is how this new proposal will improve the speed up of locations, because New Jersey has a significant number of those locations, one of them being the Passaic River, which has created enormous problems for the port of New York and New Jersey, which we have discussed at other times, and the question of dioxin contamination which is threatening the viability of that port, 180,000 jobs, and \$20 billion of economic activity, as well as our ability to tap into foreign commerce.

And so we look forward to hearing that. And I also look forward to hearing, as someone who represents a significant number of members of minority communities who have been shut out of the Superfund site, they are the ones more likely to continue to live next to the sites. They are the ones the greatest impacted. They

have absolutely the least say in the process.

I look forward to hearing your testimony on both of those points.

Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you very much, Mr. Menendez.

Before we proceed, I would like to place the statements of Mr. Barcia of Michigan and Ms. Brown of Florida, into the record.

[The prepared statements of Mr. Barcia of Michigan and Ms. Brown of Florida follow:]

JAMES A BARCIA

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COMMITTEE ON PUBLIC WORKS AND THANSPORTATION MANUS THEATHON'S AND CIVERSIGHT WATER RESOURCES

SPACE

Congressman James A. Barcia

Statement before the Subcommittee on Water Resources and Environment

June 9, 1994

Mr. Chairman, I want to thank you for giving us the opportunity today to hear the Administration's views on this important legislation. I also want to express my appreciation to Administrator Browner and to Assistant Secretary Munnell for joining us to discuss this critical issue for our nation. Administrator Browner you have been especially gracious in making yourself available to the Subcommittee on several occasions to answer our questions regarding the nation's environmental programs.

Mr. Chairman, most people would agree that the current Superfund process is not working. A faulty system for determining and assessing responsibility has resulted in huge costs for the taxpayers and for the private sector. The current liability system leaves to companies with supposedly "deep pockets" the impossible task of finding and suing into submission other responsible parties. The net gain of these efforts is to be saddled with what is left of the clean-up pie, regardless of responsibility. All of this has drained resources that we need to do the real business of the program, cleaning up hazardous waste and protecting the public.

We have also had a problem with actual clean-up. A lack of appropriate mechanisms for appropriate consultation with affected citizens and local governments, and an inability to introduce innovative processes and technologies, have hindered our efforts to provide cost-effective, timely and site-appropriate

I look forward to legislation which will introduce as much flexibility into the system as possible for responsible parties, our citizens and local governments, and regulators. Land use and innovative technologies must be considered in the context of issues such as reasonable risk, exposure, geology and cost to determine the most equitable and expedient remedies. While I consider setting national goals to be vital to the program, pigeon-holing specific sites into generic plans can be more damaging than wasting our resources on exhaustive site by site studies. In addition, we must effectively streamline the process by offering opportunities for early settlement, and reducing unnecessary clean-up costs by involving communities and businesses in addressing what may be reasonably considered to be future site needs.

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Congressman Barcia June 9, 1994 PAGE TWO

While I still have grave reservations about a liability system which promotes litigation and holds companies, municipalities and citizens retroactively responsible for what were primarily legal activities, I have heard no better alternative. Asking the taxpayers to pay the entire cost of clean-up in a time of dangerously finite resources is impractical and unfair. Asking all companies, even in selected industries, to pay through fees or taxes, represents a penalty to those who have either already gone through the process, have voluntarily accepted their responsibility for clean-up, or have not even contributed to pollution problems at any site. A system which will limit the liability of municipalities and small businesses will further protect our citizens, and limiting corporate liability to the true share of pollution is a tremendous improvement on the current system.

Mr. Chairman, Administrator Browner, Assistant Secretary Munnell, I look forward to learning more about H.R. 3800 today and in future hearings. I am hopeful that we will be able to pass legislation this year which will go as far as possible in repairing this critical, but troubled, program.

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Congress of the United States House of Representatives Washington, DC 20515

CORRINE BROWN

3D DISTRICT, FLORIDA

Statement of Congresswoman Corrine Brown Subcommittee on Water Resources & Environment June 9, 1994 REPLY TO

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Mr. Chairman, I would like to thank you for holding this hearing today and I would like to welcome Administrator Carol Browner and thank her for testifying before our Subcommittee this morning. As we have both come to Washington from Florida, I commend her on the commitment to our environment she brings to this position and the leadership she has brought to EPA. I look forward to working with her and the Agency as we move to reform the Superfund law.

I am very concerned about the impact of toxic wastes and their impact on minority and low-income communities. Superfund has been an emotional and controversial program since its inception in 1980. Although unintended, the program has spawned an irrational number of lawsuits and related transactions costs for countless small and large businesses, cities and non-profits, while failing to accomplish its primary mission of cleaning up sites to protect human health and the environment. This is true despite repeated efforts to improve the program within the current financing and cleanup framework. I believe that we need to address Superfund reform in a manner that will speed cleanups and eliminate the public health risks that have not been addressed during the 13-year history of the present Superfund program.

I have real concerns with H.R. 3800 as it is currently written. Although this plan may benefit a few large businesses and thousands of lawyers, it provides no new financing for cleanup or other priorities. The hundreds of millions of new money called for by this plan are only used to reduce the liability of currently liable parties, while leaving many sites unresolved. These sites are disproportionately located in minority and poor neighborhoods. Our communities will continue to suffer the consequences of this flawed program. I am concerned that the current system of site-by-site legal battles to raise cleanup money from all parties connected to a Superfund site is not working. Money is being spent but sites are not being cleaned up. People of color and poor people are suffering as a result. I believe that improvements can be made and I look forward to hearing your testimony.

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Mr. APPLEGATE. Of course, as we have been almost on a weekly basis recently, we are very privileged to have Carol Browner here. We appreciate your approach and also your forthrightness in answering the questions. So it is always a pleasure to have you here.

I would just mention to the Members that if you have any questions about specific sites in your area, that because of some difficulties that Ms. Browner is going to be having in being able to look these things up, that the questions be submitted in writing so that she can prepare a more thorough answer to your specific questions. And we would appreciate that.

I think we can expedite our hearing. We want to be sure that everybody has an opportunity to get all the information that they are

requesting.

So, Ms. Browner.

TESTIMONY OF CAROL M. BROWNER, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY ALICIA H. MUNNELL, ASSISTANT SECRETARY FOR ECONOMIC POLICY, U.S. DEPARTMENT OF TREASURY

Ms. Browner. Mr. Chairman, Chairman Mineta, Chairman Applegate, Mr. Boehlert, Members of the subcommittee, it is an honor

to come before you today to discuss the Superfund law.

This is a law which, as many of you have noted in your opening comments, is in need of fixing. We agree. We believe that there have been real benefits in the last 14 years as the agency has sought to implement the Superfund law. We also agree there are real changes that are necessary if we are to achieve a Superfund program that is faster, fairer and more efficient.

The piece of legislation that is before this subcommittee is the result of more than a year and a half of very, very hard work. When I first came to the Environmental Protection Agency a year and a half ago, I realized that it was important to address the very legiti-

mate complaints raised about the Superfund program.

In thinking about the best way to proceed, I recognize, as so many of you, I think, have recognized, that we needed to look outside of Washington. We needed to talk to people who were familiar

with what happens at individual sites.

So we began this process by bringing together more than 30 people from across the country: local government officials, citizens who live next to sites, PRPs—Potentially Responsible Parties. We brought them together for a dialogue, to look at where changes

needed to be made, and the nature of those changes.

Now, I will tell you, when we began this process, most people thought it was not possible to engage in a dialogue, that these were people represented interests that were inherently of a conflicting nature, and that there was not a solution possible. But we stayed the course, and after literally hundreds of hours of work, we came to a point of consensus.

Simultaneously, with the process that I put in place at EPA was a process under way through the Keystone Organization, which some of you may be familiar with. They too involved people from outside of Washington with firsthand experience of the Superfund program. They too came to a set of recommendations after hun-

dreds of hours of dialogue, of debate, of disagreement and then resolution.

With that report and the conclusions that we have reached at EPA and through the outreach we had conducted with people across the country, the administration undertook to craft a Superfund proposal. The process involved people throughout the Administration including the White House, and other Federal agencies and departments—those who had an interest in Superfund for a variety of reasons, in some instances because they are the owners of land as a Federal agency where there is a Superfund cleanup under way and in other instances because there are significant economic policies involved in the Superfund issue.

The administration engaged in a very long and, I think, a very comprehensive debate of how to fix the Superfund law. The result is in large part what you see before you today. It has undergone some further refinements after it was initially presented by the administration to the Congress. We believe that the bill that is available for consideration is one that will allow the Federal government agency to, number one, address the horror stories that so many of you have raised today, and number two, allow us to conduct cleanups in a way that is faster, fairer and more efficient.

Very briefly, Mr. Chairman, I would like to speak to some of the specific proposals incorporated in the legislation before you. The first—and I think this speaks to some of the horror stories that have been raised here today, and certainly some of the stories we heard when we talked to people across the country—is the need to

bring greater consistency to Superfund cleanups.

We heard from people who said, Well, this is happening at this site but something totally different is happening at this site; we are

confused; where's the consistency?

The current law, while it does not specify a standard level of cleanup nationwide, does establish a complex cleanup framework under which applicable and relevant and appropriate State and Federal standards are used to set clean up levels site by site.

Under the proposal you will be able to take into account the sitespecific factors, but do so within a framework that ensures that all the people of this country, regardless of which Superfund site they

may live next to, will secure equal protection.

It may be that in an instance where you are going to construct an industrial facility at a particular site, that needs to be factored into the site-specific cleanup plan. It may be at another site you are going to put residential homes, or a day-care center. Such needs should be factored in on a site-specific basis, and the changes we recommend would allow for that.

The Environmental Protection Agency under this proposal would be required to develop a formula for the most common contaminants at Superfund sites which will allow us to ensure consistency across the country. From site to site, we believe it is important to have that consistency, and this will also allow us to speed the pace of cleanups because we will avoid the need of risk assessments to develop cleanup levels at every site.

The second issue that we sought to address was the issue of litigation which so many of you have spoken about in your remarks today. Clearly, if you go back and review the debate in 1980 when

the bill was first passed, and the debate during reauthorization in 1986, no one envisioned the amount of litigation that would result from this statute. I realize this is a real problem, one that needs to be addressed.

Simply put, it is a waste of money to have 10 or 20 lawsuits coming out of every Superfund cleanup. And there are two forms of litigation. The first type of litigation is between PRPs. After the agency notifies potentially responsible parties of their liability, they look for other potentially responsible parties. So, you have company A suing companies B, C, D, E, F, trying to determine what is the appropriate amount of liability between each of those companies.

The other is the litigation by the individual companies against their insurance companies. Once liability is established, they sue the insurance companies in an effort to secure their rights on the insurance policies. These two different types of litigation we felt were extremely important to address, and we believe that we have

done that.

We do retain the principles of retroactive, strict, joint and several liability. We do so to ensure that parties that create the pollution at these sites are responsible for cleaning it up. We believe that the polluter-pay concept, which first appears in a Federal statute with the passage of Superfund in 1980, is a very important concept. It has led to an entirely different way for industry to deal with their waste. We think it is an important concept to retain.

I think that some have suggested that the retroactive component of the Superfund liability scheme ought to be eliminated in order to make the program fairer and more efficient. I will tell you, we fully reviewed many of the arguments that have been put forward. I spent a lot of time within the administration looking at the issue

of the elimination of retroactivity.

Finally, we resolved that it was not an appropriate solution, and let me tell you why. We believe it would necessitate the creation of one of the largest public works efforts in the history of this country, that there would be a significant tax increase associated with funding such an effort, and that what we have seen in terms of industry's ability to drive down the cost of cleanups, to speed the pace of cleanups, would be lost to the program. We rejected the idea that eliminating retroactivity was the answer to addressing the problems in the Superfund program.

The bill that is before you has been reviewed by the Rand Institute for Civil Justice and they have concluded that H.R. 3800 takes a significant step in reducing the amount of societal resources de-

voted to litigation rather than to cleanup.

They believe, I think it is fair to say, that we achieved our goal of getting the lawyers out of the Superfund process. The bill ensures that whatever resources are available, not just the taxpayers' resources in terms of the money that EPA puts to this program, but the resources that are generally being consumed within Superfund because of litigation and other activities, will become available for clean up, which is obviously the goal that we all have.

The proposal that is before you sets up a process for allocating liability among responsible parties and gives those parties a series of incentives to settle with the government and disincentives to

challenge the allocation.

Rather than continuing to fight these issues in court, let's get everybody into a room; let's talk about how to resolve the liability issues in a nonlegalistic setting. If need be, let's assess an orphan share so we can get on with the business of cleaning up these sites.

Also included in the package before you is the Environmental Insurance Resolution Fund, which we believe will help resolve disputes between companies and their insurers, the second type of litigation that is prevalent under the current law. The insurance fund would be used to cover those claims, and we believe with the availability of a fund, the need for litigation would be significantly reduced.

Many of you spoke to another problem, and that is the problem of the little guy, the problem of the individual who sent their pizza boxes to their local landfill thinking they were doing the absolutely right thing. There are several ways in which we seek to address those concerns and the concerns of people who have found themselves trapped in the Superfund net.

I don't think the law originated in 1980 and reauthorized in 1986 intended that result. But it is the situation we have today. We ab-

solutely believe it must be corrected.

First of all, for the truly tiny, tiny parties, the example that Mr. Boehlert gave, we think the statute should be clear in saying they are not covered by Superfund. Just get them out. Let's spell it out in the statute so there is no debate over this, there is no opportunity for anyone to try and drag them back into the process.

The second are the little parties, the people that we refer to as de minimis parties, generators and transporters of small amounts of waste, more than the tiny, tiny—perhaps a small business who was engaged in some kind of practice that resulted in hazardous waste.

What we think is important for those companies—and I think this speaks to several of the horror stories—is we should take into account their ability to pay. We should look at their resources, and that should be an absolute factor in dealing with the liability that may be appropriate.

We also believe the Federal Government should be required to provide an early opportunity for settlement with those parties. We believe it should be in the first 12 months of the remedial process that we should be required to go in and resolve their differences—resolve their problem and provide them protection from other par-

ties, so that other people can't sue them.

So for the tiny, tiny parties, let's make the statute clear, get them out. For the tiny parties, let's deal with their ability to pay, let's settle with them early. For the remaining parties, let's bring them into a system that looks at all of the issues, apportions liability, let's have an orphan share available. We think this is a far

more fair, efficient system than the current system.

Some of you spoke to the involvement of local communities. We agree with the concerns that have been raised. Local communities, the people who have lived by these sites, in some instances for many, many years now, need to have a role, a clear opportunity from the beginning for participation in the decisions regarding the site in their neighborhood and their community.

The proposal before you will make community involvement an integral part of a Superfund cleanup, from the time the contamination is discovered until the cleanup is completed. Community work groups would be established as advisory bodies at each Superfund site. These advisory groups would reflect the racial, ethnic, and economic makeup of the community, and they would include all community elements affected by the cleanup.

Their views would be solicited at every stage of the cleanup process. They would have a particularly important role in defining future use of restored sites, which, as I said before, is an important criteria in developing the cleanup plans for an individual site.

EPA would also be required to set up on a State-by-State basis community information and access offices, referred to as CIAOs. The purpose of these offices would be to serve as information clearinghouses for all sites in the State. People need access to information so that they can participate effectively in the decision-making

process.

There is an opportunity under the existing law for community groups to apply for what are referred to as TAGs, or Technical Assistance Grants. We are recommending to Congress that the process for applying for those grants be simplified so that community groups can quickly access funds to undertake the analysis and to hire the experts that they think are important to make them informed and full participants in the decision-making with respect to the sites in their neighborhood.

Two issues I wish to speak to are the need to create partnerships with States. I think some of the stories that were put forward today are in part a result of the lack of a partnership between the Federal Government and the State agencies who have responsibil-

ity in their individual States for Superfund implementation.

I think there is a sense today that at individual Superfund sites, various levels of government are doing little more than stepping on each other's toes. The Federal Government has primary responsibility for implementing the Superfund program, and under the current law has exclusive access to the money in the Superfund Trust Fund

States play a significant role under current law in the program's implementation. The result of this overlapping authority and responsibility is that there are frequently disagreements between the Federal and State government over the degree to which sites should be cleaned up, the remedy to be used, and the allocation of costs. These disagreements contribute to delays, they contribute to increases in the cost of cleanup, not to mention substantial confusion.

We want to create a partnership with the States that will allow the States the opportunity to assume responsibility and authority

for the cleanup of specific sites within their boundaries.

And I can speak to that in greater detail if there are questions. The final issue that I want to address is removing barriers to economic development of contaminated property, and I think this is again an issue that several of you raised. We believe it is important to ensure that prospective buyers do not find themselves liable for cleanups. We have suggested including in the law some specific language that will protect prospective buyers.

We believe that the effect of including such language will be to encourage development of currently contaminated sites, that people are now unwilling to buy for fear that they assume liability. Now they're unwilling to buy it. They can become a driving force in seeing that the cleanup is actually completed, because they would have an interest in the development, but they would be protected

from the liability under our proposal.

The other issue that comes up is the issue of lender liability, and some of you may be familiar with that. The agency adopted a set of rules to address lender liability issues. We were sued in court and essentially found that we did not have some of the authorities that we thought we had to adopt these rules. A provision has been included in the legislation on the lender liability rule. It would be our hope that Congress would adopt it in the statute so that we can provide those protections to banks and to others who want to lend on property.

Those are, we think, some of the very important measures included in this proposal. Again, our goal was to address the very real problems that exist in Superfund to make fundamental changes in the program, to ensure that Superfund will work in a

faster, fairer and more efficient manner.

We appreciate the opportunity to be here today, Mr. Chairman, to answer the specific questions that the Members of this committee have.

We also would like to say that we will obviously continue to be available to work with each and every Member of this committee

as the legislation moves forward.

I might say one final thing in closing. I am joined by several people today who have been intimately involved in the debate within the administration on Superfund, including Assistant Secretary for Economic Policy from the Department of Treasury, Alicia Munnell, several of my colleagues from the EPA, including Jerry Clifford, the Director of our Superfund reauthorization effort, and Bruce Diamond, Director of our Office of Site Remediation and our Office of Enforcement and Compliance Assurance.

We are more than happy to answer any questions.

Mr. APPLEGATE. Thank you very much, Ms. Browner. As always, you certainly articulate your position exceedingly well. You are very knowledgeable. We appreciate again your forthrightness.

I am sure we do have a few questions that we would like to ask, and first of all I would say to Mr. Zeliff, I can appreciate, I sympathize with his position on retroactive joint and several, but I don't think I would be interested in going as far as he would like to go. But I think that there is a problem here that we have to address.

As also, for the litigation, as you had mentioned, this thing gets extended out so far, and so much money is turned over, and it doesn't go into the sites but goes into the pockets of the lawyers. There has to be some limitations, because if we expect to get anything done, and that seems to be the biggest problem that we have, why we spend so many billions and billions and so few that get into the actual sites.

But let me ask you this. You stated that the Superfund fund, of course, as we know, is set to expire at the end of the fiscal year.

Let me ask you, how would expiration of the program authority affect EPA's ability to conduct or oversee the Superfund cleanups? And let me just add, with that, has the EPA initiated the slowdown of Superfund cleanups in anticipation of the expiration of the au-

thority?

Ms. Browner. Mr. Chairman, we are very, very concerned with the effects of an expiration. As you know, there are two pieces to Superfund. There is the Superfund program itself and then there is the tax. They are actually on different schedules, so people understand. There is the program itself which is set to expire at the end of this fiscal year. The tax would actually expire in the following year.

Based on our experience of 1986, during the lengthy reauthorization process at that time, we would like to show you a chart. This is our concern. What you can see occurring in 1986 is that the pace of cleanups dropped significantly. And it took some time to recover. It was not something that recovered the day after Congress passed

Superfund reauthorization.

This is in part because people were concerned. They didn't understand what the new law might be about. They didn't want to make

investments. And so they slowed down activities.

Another effect in 1986, which is hard to demonstrate on the chart but which I will share with you, is that technology advances were lost. What had happened is small firms had started to develop innovative technologies for cleanup of Superfund sites.

With the lengthy reauthorization process in 1986, banks were not willing to lend money to these small firms, and many of them didn't survive the reauthorization process, and it quite frankly has taken a number of years for those firms to come back and for us

to begin to see the effect of new technologies.

We are not now slowing down in any way the pace of cleanups. But, because a large number of cleanups are not conducted by the agency, but rather by responsible parties who take the lead at individual sites, we are very concerned that a lengthy reauthorization, a several-year reauthorization process, would repeat what we saw in 1986, which was a real slowdown in the pace of cleanups, and in the number of cleanup activities at different sites.

Mr. APPLEGATE. Thank you.

You have stated previously that changes that are contained in H.R. 3800 will lead to 25 percent savings in the cost of administering the Superfund program. Could you give us an idea of the basis for that estimation?

Ms. Browner. That is a number that was developed by the Office of Management and Budget. They looked at all of the changes included in H.R. 3800, and were able to arrive at a dollar amount.

It was the administration's goal from the beginning to achieve real reductions in cost. These reductions result from several factors.

One is the ability to speed the pace of cleanups, to get much more quickly to the cleanup phase and beyond the lawyering phase, if you will. Another is the consistency of the level of cleanup that will be available. A third is the opportunity for development of new technologies.

The package as a whole achieves those savings, Mr. Chairman.

Mr. APPLEGATE. Thank you, Ms. Browner.

I think what I am going to do is just move on. Mr. Boehlert is not here, and I am going to recognize our distinguished Chairman, Mr. Mineta.

The CHAIR. Thank you very much, Mr. Applegate.

Ms. Browner, let me ask about the groundwater contamination provision and the responsibility for cleanup. If you have a situation where a party has contributed to groundwater pollution on their property, and then you have adjoining groundwater which is also polluted but there is no direct connection between the property that has the contamination and the contamination in the adjoining groundwater, would the responsible party at the Superfund site have to conduct cleanup activities in that adjoining aquifer?

Ms. Browner. If a responsible party did not pollute the groundwater, they would not have an obligation to clean up the groundwater. Their obligation is to the pollution that was created at the site, and because there is pollution at an adjacent site it does not create a responsibility in the responsible party. First instance un-

less the pollution is comingled.

The CHAIR. Is that current practice, or is that part of the reform

package?

Ms. Browner. That is current practice, and it is maintained in

the proposal before you.

The CHAIR. What about in the case of the groundwater, as I understand it, under this H.R. 3800, that we are requiring that it be brought to or that the responsible party would bring it to the

drinking water standard.

Ms. Browner. Mr. Chairman, groundwater issues have been a subject of much over the last year. I believe that the agency, working in conjunction with industry, with environmental organizations, with State agencies, has within the existing law been able to find the flexibility to address the groundwater concerns that are raised. We are recommending that essentially the provisions of the current law regulations and guidance in H.R. 3800 be maintained.

I think as many of you will remember from the clean water hearing of several weeks ago, 40 percent of the people of this country

get their drinking water supply from groundwater.

We believe it is important to see groundwater cleaned up. There will be instances where groundwater will become perhaps not immediately, but in the future, the drinking water supply for a particular community, and I think that there are some in this debate on groundwater who are suggesting that it is appropriate to write

off entire areas of groundwater.

We don't agree with that. We are concerned about that. But we believe that we have been able within the existing law to strike a balance as it relates to the protection and cleanup of groundwater, and the proposal before you would maintain that balance, which is in effect, to go back to the issue of drinking water standards. Where there are MCLs, Maximum Contaminant Levels, that have been set under the drinking water law, they would be the cleanup standards. If there is not an MCL, then there would be a site-specific risk assessment.

There is within the existing law or our interpretation of the existing law an opportunity to look at the time frames within which

groundwater becomes drinking water supplies, and we do want to

see that preserved.

The CHAIR. So if someone says, Well, gee, I don't think that groundwater will ever be used as a source for drinking water, what you are saying is, that is a statement that really can't be made?

Ms. Browner. In our experience, increasing numbers of communities are depending on groundwater for their drinking water supplies. We are concerned about writing off, if you will, whole parts of our groundwater today that 20 or 30 years from now will not be available for drinking water.

This is an area that is fairly technical. The science on is extremely complicated. We believe it is important to retain what we see as flexibilities within the existing law to allow us to strike the appropriate balance of protecting our groundwaters, recognizing when it is necessary to clean them up in the short run, and when perhaps a longer time frame may be appropriate.

The CHAIR. To the extent that we have that expectation about groundwater that may have contaminants, are there natural groundwater areas that meet the clean water standards or the drinking water standards? Would you consider, let's say, natural

groundwaters that are meeting drinking water standards?

Ms. Browner. I would imagine there are groundwater supplies

in this country that meet current MCLs.

The CHAIR. Is there a conflict between MCLs and MCLGs in that

sense, then?

Ms. Browner. MCLs, the Maximum Contaminant Levels, set under the drinking water act are what is required to ensure safe drinking water. MCLGs, the Maximum Contaminant Level Goals, are what we hope to achieve. What has been incorporated in the cleanup standards for Superfund sites are MCLs and non-zero MCLGs.

In many cases MCLGs are lower than an MCL. That is, they are

more stringent.

The CHAIR. That is right. But isn't that the problem, where you are expecting people to have MCLGs on groundwater that at least today is not contemplated to be used as a drinking water source, so here you put on me the responsibility of cleaning it up, whereas maybe, I don't know, let's say the State of Connecticut is saying, No, that will never be used as a drinking water source.

Ms. Browner. Again, under the existing law, we have been able to take into account the time frame within which a groundwater supply is likely to become a drinking water supply. And we believe that that flexibility allows us to address the competing demands

with respect to the cleanup of groundwater.

I don't think that we disagree, Mr. Chairman, that it is important to ensure that we not simply write off groundwater systems in perpetuity but rather that we look at the realities on a site-spe-

cific basis in terms of the use of that groundwater.

We also have to be able to factor in the complicated science. There are some that suggest that at some sites it is possible to contain the groundwater, that you can ensure that it not move beyond a particular area. There are others who would disagree with that. There are other sites where that may not be possible.

And so looking within the existing law at these questions, we be-

lieve we can address the competing demands.

The CHAIR. If I might just borrow some more time here, again, when you say "presumed," it seems to me what you are saying is it is presumed that all groundwater at some point in time in the future is going to be a source of drinking water, and therefore it should be cleaned up. On the other hand—and that it should be brought up to that drinking water standard.

On the other hand, I hear from a company in my own area that says that there is little contamination, they are within zone A.

Maybe that is just a local designation—

Ms. Browner. I am not familiar with that.

The CHAIR. It says we have a plume within our site that is not moving anywhere. We have done our most stringent assessment of that site. Yet that site under H.R. 3800 would have to be cleaned up and yet no one is being exposed and we would be required to clean it up to drinking water standards.

Ms. Browner. It may be in the example you give that they are referring to an aquifer that never become a drinking water source.

The CHAIR. They feel that way.

Ms. Browner. Right.

The CHAIR. And that is why you said—you used the word "presumed." So I am wondering, are you presuming that all groundwater at some point in the future is going to be a source of drinking water and therefore it should be cleaned up today to drinking water standards rather than to just say today we are summarily—otherwise, you would be saying, well, we are going to then write off these areas as potential drinking water sources.

Ms. Browner. Right. There is not a presumption that every single aquifer will ultimately be used, as you say, for drinking water.

You are right that that is not an assumption.

I think the problem is in defining what is likely to be used as a drinking water supply and ensuring that when a particular site is evaluated, that likelihood is taken into account in designing an

appropriate cleanup plan.

The concern that I have, again, is that we not end up in a situation of simply saying, because today a particular groundwater supply is not used for drinking water, we don't have to clean it up, and let's just make sure it is never used in the future. I think that that would not be fair to the people of the country.

The CHAIR. Let me ask, is there some middle ground or middle

water between writing it off and MCL?

Ms. Browner. I think there is an opportunity for resolution. I think the language in the existing law and the work that has gone on between EPA and responsible parties over the last decade has come very, very close to establishing the appropriate balance, which is why we believe that retaining the groundwater language in the existing law is important.

But we are more than happy to work with you to see if perhaps

there is a solution to this problem.

The CHAIR. Let me ask, what about the 85 percent participation by eligible parties? What about that 85 percent? Do you think we will really get 85 percent participation of the eligible parties under the EIRF?

Ms. Browner. If I might I would ask Assistant Secretary Munnell to speak it that issue, she is the expert on the insurance fund.

Ms. Munnell. The 85 percent provision is one that we have some concern about. But we certainly understand the intent of that provision, and that is the insurance companies are not anxious to set up this whole fund and get the project under way if people are

not going to participate.

We don't want something as rigid as if it were 84.9, it would be not go ahead, whereas 85 percent we will. We are hoping that some way throughout the process there will be a way to get a solution that addresses the insurance companies' concerns, but is more appropriate than the provision currently in the law.

The CHAIR. Thank you very much.

Mr. APPLEGATE. Thank you, Mr. Chairman.

Mr. Boehlert.

Mr. BOEHLERT. Thank you, Mr. Chairman.

Ms. Browner, as you are aware, many of the Nation's Superfund sites are on military facilities. Where a base has closed, the surrounding communities suffer two ways: First, there is an enormous economic loss; and second, the community is left with a large property that has limited uses because of the presence of improperly disposed toxins.

Will the administration's proposal involve expedited cleanup of Superfund sites at military bases on the base closure and realign-

ment list?

Ms. Browner. Mr. Boehlert, we in the administration began a process over a year ago to address base closure cleanups. We recognize the responsibility that the Federal Government has and this President has said that Federal agencies will comply with environmental statutes. We are doing everything we can to move more quickly to undertake expedited cleanups.

Mr. BOEHLERT. Is it a priority of yours?

Ms. Browner. Absolutely. To give you an example, we are in the process of designating an individual for each base closure that will mean an EPA official in charge of making decisions at that site. We will work with the Department of Defense in terms of securing the FTEs so that we can meet that commitment.

We have also worked with the Department of Defense in looking at those contaminated areas on bases. Does the entire base get roped off and become unavailable to the community because of

this?

We need to develop a means of parceling. We don't need to hold up the whole transfer to the community. Let's just make sure that that portion of the site where cleanup has to take place is secured and that the activities commence. But, the rest of the property should be available to the community, and we have resolved that issue with the Department of Defense.

Mr. BOEHLERT. I specifically stress base closure and realignment, because I don't want you to only concentrate on bases that are closing completely. In New York, there is a base that is being realigned. About 4,500 jobs will go, and a good part of the base will

then be vacant.

But the community is working very cooperatively with the Federal Government. But we have got to make certain we have their role fulfilled to the maximum.

Let me switch over, if I may, to a de minimis issue. There are a lot of creative people, and one of the most creative is an attorney

in New York who handled the Ludlow site.

Just before Christmas a few years back he called all potential responsible parties into a theater with their attorneys. There were over 800 people. They were all with their attorneys, people who owned mom and pop stores, pizza parlors, and in essence what this attorney announced was that he was going to issue a list, and everyone on that list was responsible for \$3000 of the total cost of the cleanup. But he said he was in a Christmas spirit, so he said, If you accept now and sign as you leave, it will only be \$1,500. So a lot of people people turned to their attorneys and said, What do I do? And the attorneys essentially said, Well, if you fight it, you can win, and my fee will be \$5,000, or can you take the deal offered today and pay only \$1,500, thereby saving \$3,500.

For someone like me, that just is mind boggling. I am offended by it. And that is why I am so concerned about it. I want to get the bad apples, and you do, too. I think we all do. But the pizza box—well, talk about the difference between de minimis and de micromis, and how do you distinguish between the two, and add to

my comfort zone, if you can.

Ms. Browner. Let me say that I too and the agency find the story you just told to be absolutely appalling and unacceptable. EPA does not engage in those activities. Those activities are undertaken by lawyers for PRPs, not by the Federal Government, not by the Environmental Protection Agency, and in no way do we encourage or even suggest that attorneys undertake that kind of appalling behavior.

Mr. BOEHLERT. If I may interject right here, as you are answering, and I agree with that and in no way, shape or manner am I suggesting that, but I don't want to finger that attorney, because, guess what, that attorney was doing his job. He was representing one of big guys who is going to have to pay all the bill. But this loose interpretation of the law permitted what happened. That is

what I want to get at.

Ms. Browner. Clearly the current law allows for those activities, which is why we think one of the fundamental changes in the law must be designed to absolutely resolve those situations, to guarantee that they will not occur in the future.

There are several things that will need to be done in the law to

provide security and protection from those people.

First of all regarding de micromis, the tiny, tiny parties let me explain the definition. What we are saying is that these people should be out. The tiny, tiny PRPs should absolutely be out of the Superfund liability net. The term is defined as a small business which has less than 100 employees or contributors municipal solid waste who had their garbage picked up and taken to the local land-fill. Superfund should not cover the small business owner, operator or contributors of only municipal solid waste. We are going to talk about hazardous waste in a second.

A nonprofit as similarly defined—a hundred employees or less that contributed only MSW-that is who had their garbage picked up and delivered to the local landfill-should be out of the pro-

gram.

An individual homeowner would be out of the program. There is a story involving a PRP who sent letters to every homeowner in a particular area, including the president of the company's mother saying, "If you pay today, you will not be liable." We don't want to

see those kinds of letters sent to the people of this country.

In those categories if they were sending only MSW-garbage to the local landfill, the law should clearly state that they are not captured in Superfund liability provisions. If they send less than 55 gallons or less than a hundred pounds of material containing hazardous materials-essentially a drum of material-they should be

out of it.

For a small business of 20 employees or less that was sending a larger amount of hazardous material to a landfill, for example, we would try to settle with them quickly and in settling, take into account their ability to pay. What would be a good example of a small business? An auto repair shop that had some amount of contamination in it, would be above the threshold. To get them clearly out would require the EPA for the de minimis category to begin settlement discussions with them within a 12-month period. We would take into account their ability to pay their share. And once that is resolved, the Federal Government would protect them from lawsuits brought by other PRPs.

They would not be subject to litigation. It is our strong hope that this will get the lawyers out of that part of the system. The Federal Government will be available essentially to do what people now have to go get lawyers to do for them. We don't think they should

have to do that.

Mr. BOEHLERT. Thank you very much for a comprehensive answer and for an encouraging response.

Mr. APPLEGATE. Yes, I agree.

Mr. Haves.

Mr. HAYES. Yes, thank you.

Ms. Browner, I really just want to talk about two different areas. The first is under the Energy and Commerce bill, under Title II, which I borrowed the full copy of, under Section 208, I was asked to look at it, I suppose I am concerned, and I didn't have a chance, nor was I present at the time Energy and Commerce talked about this, but this is the area of the bill that is talking about the State involvement in the sites, many of which would be military-related sites. What I am trying to figure out from reading Section 208 is the funding mechanism and just how that works and what controls

In other words, let's assume the State of Louisiana says we have got to clean up a site, it is for the X, it is now—whether it is closed, realigned, or open, let's assume there is some impact. So we are looking to you, we want your help, we want you to approve our program. But how do you monitor our cost?

In other words, let's assume our programs that you are approving what is the EPA's continuing role in how much we are spend-

ing, and what the sources are?

Ms. Browner. The Title II, the State role title, was amended in the Committee on Energy and Commerce markup, and let me explain the effect of the amendment. Under the current law, States must contribute a 10 percent cost share for remedial actions, plus 100 percent of operation and maintenance.

My colleagues are suggesting is that your question is about a Federal site, and I am answering about a non-Federal site. I apolo-

gize. The Federal Government pays for a Federal site.

Mr. HAYES. But under the State assumption, what I think happens—and as I say, the language of the bill is not clear to me, I am not really trying to give you my opinion of what it says, to me it is unclear. I am trying to figure out what it means in terms of

States taking over, say, an abandoned or closure site.

What is the State role? Because as I read 208, they are able to take over a site. How do we control costs of that? In other words, what mechanism is in place to take a look at what they are spending? And unless I am misreading the statute, it comes from the fund.

Ms. Browner. Yes. The costs are covered by the fund at Federal

sites.

Mr. HAYES. When we turn it over to the State, how do we control

their spending, is what I am trying to ask.

Ms. Browner. Under the amendment offered by Mr. Schaefer and adopted in Energy and Commerce Committee, the States follow the Federal rules.

So when they take the responsibility, they do so pursuant to the rules and the guidance that will be adopted by EPA. They have the same requirements as the Federal Government would have in

terms of the oversight that they would perform at a site.

Mr. HAYES. I understand that. I am talking about cost containment. Louisiana, California, Texas and Tennessee race to the Treasury. There is nothing in 208 that talks about any State coordinating with another. Does it become like—there is nothing in 208 that I can find that deals with what I think is going to be a burden that you inherit of perhaps the States racing for the cleanup funding dollars before they run out, and we have got about 1800 sites that would qualify.

That is what I am trying to figure out, who is the gatekeeper for this that looks like a great chase for Federal dollars for States that are short. I am not blaming you for it. I don't understand, under the current bill we are handed, what happens and who makes the decision and who gets the fund first or how that is determined.

Ms. Browner. Because you have asked a question that I just do

not understand could I provide a response for the record?

Mr. HAYES. I do that a lot. It is not really my fault. I ask hundreds of those questions.

Ms. Browner. You happened a find an area I am not entirely fa-

[Subsequent to the hearing, the following was received from Ms. Browner:]

Under Section 208 the Administrator will transfer to the States CERCLA Sec. 120 authorities through a contract or cooperative agreement. In order to transfer the authority, the Administrator must determine that the State has the ability to exercise oversight authorities at Federal facilities in accordance with the Superfund Reform

Act. Therefore, the procedures, remedies and levels of cleanup should be the same as would occur in a similar situation at a private facility.

The primary check on states as far as applying the same procedures, remedies, and levels of cleanup is the ability of the Administrator to withdraw, in whole or in part, a state's authorization if the state exercises its CERCLA authorities in a manner that is clearly inconsistent with the Reform Act. In other, words, states would need to use the same remedy selection criteria such as consideration of future land use and use the same public participation procedures as would EPA. Otherwise, EPA could withdraw the state's authorization.

Regarding prioritization, the Federal government will be able to work with the states in developing priorities for cleanup.

Mr. HAYES. Let's just keep the record open. I don't have a side or axe to grind. I can easily see where a little State like mine going up against California or Texas, we are going to have an awfully difficult time competing for dollars that are limited inside the fund. I just wanted to make sure there is equal treatment.

Ms. Browner. I am sure there are checks and balances so it is not as if a State can come to the fund and say, We have got 15 MPL sites, so write us a check. The money doesn't just go out auto-

matically.

Mr. HAYES. I am just saying when you read Section 208, I don't

see any means to accomplish that.

The Chairman of the subcommittee had a genuine concern about doing language that at least reflects what ought to be a fair competition.

The second part has to do with a statement you made regarding retroactivity. But I didn't write it down so I don't want to repeat

it in case I misstate it.

You used a phrase about a larger amount of public works projects would be initiated if we did not avoid retroactivity. I didn't quite follow. Tell me what you meant by that, or where those expenditures and volume come from if we indeed adopted a retroactivity provision.

[Subsequent to the hearing, the following was received from Ms.

Browner:

Currently, more cleanups are being financed by PRPs (70 %) than by the Superfund (30%). This is a direct result of the use of Superfund's enforcement authorities, which allow EPA to leverage resources and conduct more cleanups than it could using its cleanup resources alone. In FY 93, for example, EPA obtained commitments from PRPs to conduct \$1 billion in cleanup activities. EPA was able to obtain commitments for over \$1.4 billion in cleanup activities from PRPs in each of the two previous fiscal years.

Abolishing liability for acts of disposal that occurred prior to the passage of CERCLA (pre-1981) or SARA (pre-1987) would requite that the public sector conduct substantially more cleanups, transforming Superfund from a liability-based cleanup program to a public works program. EPA estimates that approximately 70% of all disposal at NPL sites occurred prior to 1981, and approximately 99% of all disposal at NPL sites occurred prior to 1987. In order to maintain the current pace of cleanup, Superfund would have to finance 70% or 99% of current PRP expenditures, depending on whether liability was abolished before 1981 or 1987. Government expenditures would have to increase by \$1.1 billion per year if pre-1981 liability were abolished, and by \$1.5 billion per year if pre-1987 liability were abolished.

Another drawback of abolishing retroactive, liability is that society would lose the benefit of more efficient PRP cleanups. Because of government contracting and documentation requirements, PRPs are generally able to conduct cleanup activities at a 20% savings as compared to Fund-financed cleanups. As a result, when cleanups are shifted to the public sector society ends up paying more money to achieve the same objective.

Ms. Browner. Can I give a little bit of history and then the answer.

Mr. HAYES. With your indulgence, Mr. Chairman—

Ms. Browner. Very quickly, when the Superfund program was first created, the Federal Government would spend the money, and do the cleanup, and then seek cost recovery against the parties who were responsible. And, in fact, are were a lot of those cost-recovery cases still pending. It takes a lot of time to get the money back into the fund.

In 1986, the agency changed its policy of using the fund and then seeking reimbursement. It began what is referred to as an enforcement-first policy, whereby the PRPs were sought out, found, and encouraged or compelled to conduct cleanups. Then the PRPs actually spent money for cleanup rather than the Federal Government spending the money initially.

Today, 70 percent of the costs associated with all cleanups are handled with private dollars. It never comes through the Department of Treasury to EPA to the site. It is all being done outside of the trust fund. That is a huge amount of resources available for

cleanup activities beyond what the tax creates.

The concern that we have, and we have several concerns about retroactivity, but the one that you are referring to, Mr. Hayes, is that we will lose that 70 percent contribution. That significant contribution of resources to clean up activities, if we abolish retroactivity. Essentially in all the proposals that we have looked at and they vary to some degree, they include a tax which would necessitate creation of a larger fund than the current fund, for cleanup activities.

It would be a large public works undertaking. And you would lose the activities that are currently going on for which there are a number of important benefits, including the fact that PRPs have been very successful at driving down the cost of cleanups. It is their money. They think carefully about how it is being spent.

We are concerned that in a public-works-type program we would not see costs reduced. We are also concerned that there would no longer be the incentive for voluntary cleanups, and that people would say, "Well, I can wait to get the money out of the fund, why should I undertake any activity, why should I put any money out, I will just wait."

There are a lot of sites in each of the States that are not NPL sites; they need to be cleaned up. People will look to have them added to NPL rather than undertaking voluntary actions, and we will see another delay in the number of cleanups, not just the pace

of cleanups.

The final concern that we have is that of fairness. There are a lot of companies over the last 14 years who have come forward and paid for cleanups. They have done so because that is what the existing law requires. If suddenly those people who refused to come forward, who refused to cooperate for the last 14 years, are rewarded with a new public works program, our ability to get people to undertake anything on their own volition, we think, is significantly diminished, if not totally removed.

We are concerned that elimination of retroactivity will not result

in a faster, in a fairer, in a more efficient program.

Mr. HAYES. On that line, and based upon, as you say, people who have come forward, people who refuse to do so, the refusal to do so may be for different reasons. What if instead we used a retroactivity linked to culpability and made a differentiation between doing anything that violated the law at any time, and if you followed the law, then maybe it isn't great government policy to say, therefore, for violating a law or not violating the law, we are going to treat you exactly the same.

Couldn't we make the differentiation between culpability and the violation of a State statute tied to the ability to go back and de-

mand a participation in funding?

Ms. Browner. We in the administration looked at that idea. Several people have advanced that idea. And on the face, I understand

why it is attractive.

What we discovered in analyzing it is that it merely changes the nature of litigation. It doesn't get rid of the lawyers. People would still be suing over the question, "Did I do that before or after the effective date of a statute." And so from the date of passage by the Congress you would say, "You can't do it anymore. Everyone will be trying to get on the right side of that, and huge amounts of litigation would still ensue.

Mr. HAYES. It certainly limits the issues.

Second, it would allow some process for determination instead of going through the other elements. It certainly would remove the charges that someone didn't violate the law and is responsible, which in Louisiana there is no allegations for violation, at least there would have to be a violation which then would lead to evidentiary proof. That is an element missing in the system now.

Thank you, Mr. Chairman, for your indulgence.

I would appreciate if you could add to that so I understand what happens with States that compete for fund dollars.

Ms. Browner. Certainly. Mr. Applegate. Thank you.

The gentleman from Pennsylvania, Mr. Clinger. Mr. CLINGER. Thank you very much, Mr. Chairman.

I hope, Ms. Browner, you are prepared to stay here until Saturday. Just following up on the Chairman, Chair Mineta's question, my understanding is that 85 percent of the sites, the Superfund sites that have been identified, do have groundwater contamination. Is that an accurate figure? If so, are we talking about a substantial increment in cost over what we would normally have to do in this area?

Ms. Browner. You are correct, about 85 percent of Superfund sites involve some form of groundwater contamination. Because these activities are taking place now in terms of cleaning up and protecting our groundwater, and we are advocating that the law in that area not be changed, we don't see an increase associated with

the proposal we make on groundwater.

Mr. CLINGER. Let me turn to something you alluded to in your testimony. It is one of concern to me, and I suspect my colleagues in the Northeast, and that is the issue of abandoned industrial sites sitting there vacant, not being utilized for any other purpose because a buyer is presently very reluctant to undertake what could be a massive problem with liability. They didn't create the

problem. Therefore, they don't feel that they can assume that li-

ability, and therefore they are not willing to buy.

Some States like Pennsylvania are attempting to address the issue with liability legislation. I wonder if you could address specifically what kind of waivers or what the provision is in the proposal that would give them some—relieve some of their heartburn in this area and hopefully get some of these abandoned sites back into productive use.

Ms. Browner. Mr. Clinger, we share your concern about these abandoned sites. One of our goals in coming to the proposals that

we have made was to specifically address those sites.

We want to see communities have the economic benefits of the redevelopment of these urban sites. And there are literally hundreds if not thousands of them across the country. And the effect far too frequently is that development can't occur because the developer is not interested in assuming the liability, and so rather than look at an urban site, they look at a "green field".

We wanted within our recommendations to address that. We believe we have done so, in large part with two recommendations. One is the provision for a prospective purchaser—an individual or a corporation that decides to buy a site, and that has had no inter-

est or responsibility previously with that site.

Let's make sure in the statute that they are protected from liability, that they do not by the mere purchase of that site assume any kind of liability. We think that—and we have talked to a lot of people in the business community—that will serve to stimulate cleanup activities and the kind of economic investment that is important, particularly in our urban centers across this country.

Mr. CLINGER. Would that apply also to the potential mortgage

lender?

Ms. Browner. The second provision I was going to speak to covers the issue of lender liability. As I said earlier, EPA attempted to provide lender liability protection. We adopted a series of rules designed to do that. A court has found that we don't have that authority within the existing law. And, so we are recommending to Congress that you essentially pick up what we did in the rules and put it in the statute. We worked with the banks on this proposal. They believe it addresses the concerns that you raise.

These two provisions protect prospective buyer and protect the lenders. You need to do both if you are going to stimulate the kind

of redevelopment that you want.

Mr. CLINGER. I think that is very encouraging. I hope that that survives the process and certainly is included in whatever we finally do with this legislation, because it really has been a terrible detriment to development, particularly in some of the older sections of the country.

I saw an interesting provision that requires a mandatory authorization of \$300 million, as I understand, per year for the subpoena tax which would not be subject to annual appropriations, as I understand, for the orphan's share, which is identified—unidentified

liability would be attributed to a specific party.

I wonder if you have had a chance to talk to the appropriators on this, what their views might be on basically appropriating without their involvement.

Ms. Browner. There are discussions ongoing with the appropriators about this provision. I might just briefly mention the reason

for this provision.

If we are going to address the legitimate complaints associated with the current liability scheme, and there are complaints, and we agree there are legitimate complaints, we don't think that eliminating retroactivity, getting rid of joint and several liability, is the answer. We believe creating a process, an allocation scheme is absolutely essential. And that involves, as I said before, taking certain people out, providing early settlements for others, and look at ability to pay.

And then for the people who are left, bringing them to the table and using an orphan share, where there is a part that cannot be covered among the remaining parties, to get on with the job of

cleaning up the site.

In order to bring people in and get them to participate in an allocation scheme, the government has to be willing to say, here is our pot of money, it is reliably available. Otherwise, people are going to say, "Why should I come into this process and agree to something and have the Federal Government not agree to their part of it?"

That was the reason for the mandatory appropriation to guarantee that the government's share would be available on an ongoing

basis.

Mr. CLINGER. It is my understanding that States also have the liability for a portion of the orphan share, and I know that the concern that would be raised by a number of us who are concerned about unfunded mandates, is that a new unfunded mandate? Is the State going to be required to come up with—they are supposed to pay a portion of the orphan share at each site, is my understanding.

Ms. Browner. To the best of my knowledge related to the orphan share, you are correct, that States would have a cost share. It is 15 percent. And this is the answer I started to give to Mr.

Hayes.

The amendment adopted in the Committee on Energy and Commerce, says that States shall provide a 15 percent cost share. It doesn't give them an option anymore. It just has a 15 percent cost share which includes the orphan share and O&M.

But in terms of the dollar amounts for individual States, I don't think we believe that this is a change that will increase State costs.

Mr. CLINGER. From existing law?

Ms. Browner. Right, in terms of the total dollar amounts that States will have a responsibility for.

Mr. CLINGER. So this is not an additional responsibility States

will have.

Ms. Browner. No.

Mr. CLINGER. Putting on my Government Operations hat here, I wonder if you have costed out what this is going to involve, what kind of an additional burden this is going to place on your agency, which in our review over at Government Operations, we know you are stressed out with a lot of these programs.

How do you feel you are going to be able to deal with the additional responsibilities that this is going to impose upon the agency?

Ms. Browner. We did look at those issues. Again, when we look at the package as a whole, there are savings to be had. The primary area where there will be an increase to the agency is in the area of the PRP search and the allocation system.

What happens right now—and some of you spoke to this in your opening statements—EPA finds as many PRPs as we can find but not necessarily all of them. Then, the PRPs are left to find the

other PRPs.

What we are suggesting in this legislation is that EPA would assume a greater responsibility in finding all of the PRPs, that would be government's role as opposed to PRPs'. The costs associated with that expanded PRP search we believe is an additional \$21 million a year.

I have to tell you, that I think it is money well spent, for the government to take on that responsibility, to go out and find the PRPs,

and that the return on that investment is a wise one.

Mr. CLINGER. Just one final comment. Would you propose to contract out any of the responsibilities, the new responsibilities under the hill?

Ms. Browner. For the PRP search, we use contractors right now, and given the existing caps and things like that, we would probably look to contractors for that function in the future.

Mr. CLINGER. Okay. Thank you. Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Clinger.

I would ask the Members here just for a moment. If we can try to restrict this, I know we went through some extended questions. Mr. Clinger got 10 because of a change in the bulb. We are trying to keep everybody within the 5-minute—as close as possible. And I think we will be able to get everybody in. Otherwise, we are going to have difficulty in getting all the questions in.

Let's see. Mr. Borski.

Mr. Borski, Thank you, Mr. Chairman.

Again, Ms. Browner, I want to congratulate you on a remarkable

job of bringing this legislation forward to us.

I also want to thank my colleague from Pennsylvania, Mr. Clinger, for raising a question that I am very concerned with in the City of Philadelphia, with the prospective purchasers, and I appreciate very greatly your answer. I am confused with Mr. Clinger raising it for us, because most of the businesses in Philadelphia are moving to places he represents. But I do appreciate greatly the answer.

I do want to discuss with you a problem we have in Philadelphia with our transportation authority, that because of the Federal law, the Rail Reorganization Act of 1970, it has been forced to acquire a rail yard which is a Superfund site. Sixty years ago PCBs were

released at this site.

Today, SEPTA is much like an innocent landowner or someone who inherited property or a bank who is forced to foreclose on property that happens to be a Superfund site. SEPTA has cooperated with EPA and has spent some \$17 million doing initial cleanup action. It could still be liable for millions more.

Should SEPTA receive the same consideration as other innocent

owners and operators do under this proposal?

Ms. Browner. The agency has engaged in some discussions with the railroad industry. They have brought to our attention some changes in their liability because of some statutory changes. And we are more than happy to continue to work with the industry and to work with you and your office to see if there is a resolution available.

Mr. Borski. Thank you very much.

Can you tell us how this proposal addresses the slow pace and high cost of Federal facility cleanups, especially in light of EPA's inability to recover its oversight costs from other Federal agencies?

Ms. Browner. This administration is firmly committed to accepting the responsibility we have at Federal facilities for ensuring compliance with all environmental statutes, including Superfund. We worked very closely with the Department of Defense and the Department of Energy in crafting our recommendations to the Congress, and are continuing to work with those two agencies, which are really the two departments who have essentially all of the responsibility in terms of Federal facilities, or close to all of it, to ensure that the statute addresses their concerns, and will allow them to do this job in a much more efficient and timely manner.

Mr. BORSKI. Thank you very much.

Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Borski.

Mr. Inhofe is not here.

Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

A couple of questions on the retroactive liability issue and the whole litigation process. I applaud the limitation of EPA oversight costs, which can be collected from cooperating PRPs. But I understand that the government legal single fees are exempted. Is that correct?

Ms. Browner. No. The oversight cap includes DOJ costs only when EPA and DOJ consult on issues related to EPA's oversight of a response action. DOJ costs for negotiating and enforcing provi-

sions of a settlement or order are not subject to the cap.

Mr. HUTCHINSON. Contracting with DOJ?

Ms. Browner. As you are well aware, the Department of Justice is the agency's lawyer when we move into litigation or judicial proceedings. Again, the proposal that is before you, Mr. Hutchinson, we hope to substantially increase settlements, and therefore avoid being in court. This is the creation of a whole new system that doesn't currently exist, which we believe in almost all instances will increase PRP settlements with the U.S., as well virtually eliminate contribution actions among PRPs, so as to keep these matters out of litigation between PRPs.

But the cap on the government's expenditures include the DOJ

portions.

Mr. HUTCHINSON. Is there a lot of precedent in the Federal Gov-

ernment for using DOJ attorneys?

Ms. Browner. All the Federal agencies do it use DOJ to represent them. The Department of Justice is the government's law firm, if you will, and they are used for all matters at all agencies.

Mr. HUTCHINSON. Do you have a figure on how much per year

out of the Superfund budget goes to those attorneys?

Ms. Browner. Thirty-two million dollars a year from the trust fund goes to the Department of Justice to cover their costs.

Mr. HUTCHINSON. And will that be entirely eliminated?

Ms. Browner. Well, hopefully it will be reduced overtime. There is still a backlog of cases which require DOJ attention at the present level. Again, because it is our strong belief that the plan we have proposed will avoid litigation between PRPs—but there will still be the need for Department of Justice involvement.

Mr. HUTCHINSON. Why is liability expanded in some areas from hazardous substances to now include pollutants and contaminants

as well? What is the rationale on that change?

Ms. Browner. The inclusion of that language speaks to sites where the contaminants may not be hazardous waste per se, but of another nature, to ensure that those contaminants are also addressed.

Mr. HUTCHINSON. Do we have any idea how much of an expansion that may be, what that may include that is not currently cov-

ered?

Ms. Browner. My staff is informing me that we believe it is a relatively narrow expansion, but we could provide you with an analysis of that in writing.

Mr. HUTCHINSON. I would appreciate that very much.

What kind of savings are anticipated with the use of the Environmental Insurance Resolution Fund, the EIRF, under Title VIII? [Subsequent to the hearing, the following was received from Ms. Browner:]

Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act, authorized the Environmental protection Agency to respond to releases or substantial threats of releases of pollutants and contaminants which may be present an imminent and substantial danger to the public health or welfare. H.R. 3800 would provide EPA consistent authority to order potentially, responsible parties to conduct response actions or to seek reimbursement or response costs the government incurs. This proposal recognizes that there are some situations where materials which are not listed as "hazardous substances"—and which we might not commonly, think of as hazardous in fact—nonetheless may pose dangers to human health, if they are present in sufficiently large quantities, particularly to groundwater. Such materials may include sulfates and nitrates.

Ms. Munnell. Yes, as you know, that is designed to eliminate—hopefully reduce substantially—litigation between the insurance companies and the PRPs. The hope is that most of that litigation

will be eliminated through this process.

Mr. HUTCHINSON. It is—my understanding the Rand report on the transaction cost found that only 1 percent of the PRPs' costs were for disputes with the insurers. If that is the case—is that not the case in the Rand report? I see people shaking their head furiously.

Ms. MUNNELL. Our understanding is that it is much higher than

that. We can check on that and get back to you.

[Subsequent to the hearing, the following was received from Ms.

Substantial savings can be expected to result from passage of the Environmental Insurance Resolution Fund. The purpose of the Fund is to resolve insurance claims between insureds and their insurers and therefore eliminate the vast majority of collateral litigation that has historically protracted cleanup of Superfund sites. Savings would occur as a result of substantially decreased legal costs as well as from

the more timely cleanup of waste sites. The Administration estimates that between \$ 225 million and \$267 million will be saved annually through passage of the EIRF.

Mr. HUTCHINSON. Because that would impact whatever kinds of savings could be projected on that.

I think that is all I have. I would appreciate look into those is-

Ms. MUNNELL. I think it is being done as we speak.

Ms. Browner. They are reading.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you.

The gentleman from Texas, Mr. Geren. Mr. GEREN. Thank you, Mr. Chairman.

Ms. Browner, I certainly appreciate your appearance here and all the time you have put in lately. It seems like when you are here, it is like when the Red Sox come to Rangers Stadium, we have a full house. When you are here, we have a line out the door.

Ms. Browner. I am happy to come.

Mr. GEREN. We appreciate the attention.

I want to follow up a little bit on what Mr. Hayes talked about, Section 208, because it was added to the Energy and Commerce bill without really any debate, and I am very concerned about what the potential ramifications of that amendment could end up being.

Mr. Haves talked about it from a State perspective. I would like to just raise it from the DOD perspective. What this really does is put the States in a position, because they have no matching requirement of any sort, which is understandable, but they have every incentive in the world to gold plate a cleanup. And in the case of a DOD facility, it is possible that it could impose a very substantial burden on the already strapped defense budget without any real checks and balances in place to prevent that from happen-

There is a site in Colorado, estimates for the cleanup of that one alone from the Colorado environmental agency range from \$2 billion to \$18 billion. That is real money even when you are talking

about the size of the defense budget.

So you told Mr. Hayes it was not an issue you had spent much time on, but I think it was added to the bill without much discussion. Many people are sympathetic to the need for heavy state involvement. But that is a situation where the State has every incentive to ask for the world. You could ask for money going to a base forever. That is an issue that was not in the administration's bill, it is a new provision, and from the standpoint of somebody deeply concerned about spiraling environmental cost for the Department of Defense, as well as its struggle to try to meet the threats around the world, I just ask that the administration look into that and get with the DOD as well and make sure we are not doing something we didn't intend to do with that provision.

Ms. Browner. My colleagues remind me, Mr. Geren, that the Department of Defense did work with Mr. Schaefer in crafting this proposal, and they do support the portion of it relating to Federal facilities, which is the portion obviously that would affect them.

But we certainly would be more than happy to provide the committee a written explanation of that section in terms of the concerns that have been raised by you and Mr. Hayes.

[Subsequent to the hearing, the following was received from Ms. Browner:]

Section 208 provides that a state may apply to EPA for a transfer of authorities to oversee the cleanup of any or all facilities owned or operated by the federal government in that state. If EPA determines that a state has the resources, capabilities, experience, and authorities EPA shall enter into a cooperative agreement and transfer Section 120 (relating to federal facilities) authorities to the state. These authorities include: establishing timelines for RI/FS; review and approve all documents; select remedial actions and enter into and enforce agreements or orders with federal agencies.

The primary check on states as far as gold plating is concerned is the ability of the Administrator to withdraw, in whole or in part, a state's authorization if the state exercises its CERCLA authorities in a manner that is clearly inconsistent with the Reform Act. In other words, states would need to use the same remedy selection criteria such as consideration of future land use and use the same public participation procedures as would EPA. Otherwise, EPA could withdraw the state's author-

ization.

Ms. Browner. If I may say generally something about this issue of State responsibility, it is a significant issue, and I think it is one worthy of review and consideration. What happens right now at sites is that all too frequently the Federal and State governments are bumping into each other. We set out to get rid of that duplication of effort, if you will, and we worked with Energy and Commerce to secure further refinements.

The original concept put forward was one of authorization. A State could be authorized to assume responsibility for an individual site, or for all sites within their State. The Schaefer amendment looks to a different vehicle, which is referred to as cooperative agreements, under that amendment EPA would enter into cooperative agreements with States that would allow States to take re-

sponse actions or require response actions at NPL sites.

Again, they would have the ability to do it on a site-specific basis or on a State-wide basis. There was a tremendous amount of discussion back and forth about how to ensure consistency, how to ensure that the States couldn't front load things to get more money, that EPA couldn't do things to prevent giving the States the amount of money that they needed.

The current law limits States involment at sites but sets a con-

tribution level for all Trust Fund expenditures and O&M costs.

Mr. GEREN. Now there is no cost sharing, is that—

Ms. Browner. A facility owned by the Federal Government is es-

sentially the same as a PRP. It is our Federal responsibility.

Mr. GEREN. The cost share part, that is the problem. The State has every incentive to ask for the world, and since it has no share whatsoever, there is no check on the State asking for the world.

Ms. Browner. That was the next part of my answer. First I was speaking generally as to how States, non-Federal sites could as-

sume responsibilities.

as a second part of that, the Schaefer amendment, requires States to follow the Federal rules. It is not as if they can create a separate program, if you will. When they accept and enter into a cooperative agreement to undertake the responsibility at a specific site, they do so pursuant to the Federal rules. And I think that is a significant check and balance.

Mr. GEREN. But there is tremendous amount of discretion that goes into interpreting those Federal rules and regulations. If you

are having to pay the bills, you would tend to perhaps interpret them more conservatively than if you have got someone else paying the bills.

My time is up, but would the administration support a requirement that they be scored for budget purposes under Section 208

cleanups so that---

Ms. Browner. As I understand it, the Department of Energy and the Department of Defense when they submit their annual budget requests to the Congress, do include information as to the individual sites that they will be using resources on in that fiscal year. And we can certainly talk to them about how that information is provided.

Finally, if I could just say one last thing, don't forget that just because a State would have responsibility for a Federal site, the agency responsible for that site, for example either the Department of Defense or the Department of Energy is still there. They don't go away because the State has come in. They are there in the same

way that a PRP is there at a non-Federal's site.

It is not as if when a State takes over a site, the Federal Government disappears. The State is essentially doing what EPA would be doing but the Federal agency with the responsibility is still there.

Mr. GEREN. The responsibility for writing a check to pay for it. Ms. Browner. For example, DOD or DOE had budgets that they cared very dearly about in terms of expenditures. At a Federal facility they would be responsible for cost of cleanup.

Mr. GEREN. The State's and the DOD's purposes could be at cross purposes. The DOD would not be in a position to force reasonable-

ness on the State.

Anyway, I appreciate that. I am anxious to talk to the DOD at greater length about it. But I appreciate your testimony. Thank you very much.

Mr. APPLEGATE. Thank you, Mr. Geren.

Mr. Gilchrest.

Mr. GILCHREST. Thank you, Mr. Chairman.

Ms. Browner, Chair Mineta earlier made a statement about groundwater meeting certain stringent requirements, national requirements. In the bill they make reference to something called site-specific, that if this area is going to continue or will be used for an industrial site, then the standards for the cleanup will be different than if used for a residential site. I understand the need for pristine drinking water, and I favor strict standards for pristine drinking water.

Chair Mineta talked about a plume in an area, an industrial site in his region, that would apparently continue to be used for an industrial site. Eventually, however, we don't know if in the year 2094 that will be a residential site and people will have to drink that water. However, is there some flexibility for a particular industry with a contaminated plume to come into compliance knowing that in the near future it is going to be used as an industrial

site as opposed to a residential site?

Ms. BROWNER. There I think it is important to make a distinction between contaminated soils and groundwater contamination.

They are very, very different, and therefore are addressed in the

statute differently.

Future use, in terms of industrial versus residential use, is not really applicable to groundwater in the way that it is applicable to soils. And I think perhaps there has been some confusion about this. We do believe that it is appropriate to consider future land use. In fact, we want the community working groups to make recommendations in the development of a site-specific cleanup plan as to that future land use and to factor that into development of a cleanup plan for a particular site. But that relates to contaminated soils.

In the case of groundwater, I think all of us are aware that groundwater can move huge distances, and just because a factory is going to sit here with the groundwater underneath of it, doesn't mean that that groundwater is not going to move 20, 30 miles away, and potentially become the drinking water supply for a resi-

dential community built 10 or 15 years from now. Mr. GILCHREST. You have got me sold.

Let's say in an existing military base, not a military base that is being closed or turned over to a State or was closed 10 years ago and now they have found some contaminants, I think a pretty good sense on how all that works, but for a practical matter, you have a military base that is not scheduled to close, and there is somelet's say contamination there over the years, whether it is ordnance or toxics or whatever, and the military base is making an effort to clean it up.

What criteria would EPA use to declare that a Superfund site, and then if it is declared a Superfund site, as opposed to the military base continuing to clean it up itself, would declaring it a

Superfund site expedite the cleanup?

Ms. Browner. Let me answer the first question. The criteria used for listing a site on the National Priorities List is the same regardless of whether it is an active base, or a base that has been closed, or is private lands. It is the same. There is distinction that

In terms of how to get the fastest possible cleanup, I think if you look at the history of the Superfund program, the people's position on that changed several times. There are some who believe that getting on NPL is the way to get a site cleaned up more quickly.

There are others who now believe that is not case.

We want to move beyond that debate, and so we have done everything we can to encourage things like voluntary cleanups to make sure that people just get out there and get it done, and not wait for a listing to occur.

And those instances where a listing has occurred, the number of changes we talked about will we believe result in expedited clean-

ups and the shortening of the time frames for completion.

The purpose is I think to not be focused on whether or not something is on a list. The purpose is to be focused on how to get this job of cleaning up all of these sites across the country done in the most efficient, cost-effective manner.

Mr. GILCHREST. Thank you. Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Gilchrest.

I would only say at this juncture that we will be having a vote approximately a quarter after 12:00, and we have to abandon this room by 1:30 because Surface Transportation has a lease on it from then on for the rest of the afternoon. So again, I would only just state, let's try to keep the questions as tight as we possibly can, stay within your limits if you can, and we can get through this procedure and get out of here at the proper time.

Having said that, let's see who is next here. Mr. Lipinski.

Mr. Menendez.

Mr. MENENDEZ. Thank you, Mr. Chairman.

Madam Administrator, if this bill goes through the way—I assume you support the bill.

Ms. Browner. Yes.

Mr. MENENDEZ. If this bill goes through the way it is, could you quantify for us at what rate—would there be an increase in the rate of cleanup, and if so, can you quantify it?

Ms. Browner. We believe that the rate of cleanup would be speeded approximately 20 percent. There are two numbers to look

at in this regard.

Mr. MENENDEZ. And----

Ms. Browner. One is with regard to ongoing cleanups and how to make them happen more quickly. That is one. The second is how to get more cleanups started. We believe that in both instances, there will be real improvements.

We will see far more cleanups commence in part because of the

incentives for voluntary cleanups created in the bill.

Mr. MENENDEZ. Let me ask you, with reference on page 16 of your written testimony, you talked about the community working groups and whatnot, and I am wondering—a couple of questions. One is, is the establishment of the independent State Citizen Information and Access Office, is that a mandatory establishment or is that a voluntary establishment?

Ms. Browner. If a State chose not to create those, then EPA would assume the responsibility. We believe that they are extremely important. As I said earlier, and I think you spoke to this, Mr. Menendez—we want to ensure that citizens have a right to

participate in the decision making. That is one piece of it.

The second is to ensure that they have access to the information so they can be effective participants. And the establishment on a State-by-State basis of the CIAOs ensures that.

Mr. MENENDEZ. So it would be up to the State, though, to pursue

it, if they advocated that role—

Ms. BROWNER. We would require an EPA regional office to be

used if a State did not form a CIAO.

Mr. MENENDEZ. From your testimony, I understand they would then go ahead and—what role do they play in nominating members to community working groups?

Ms. Browner. They assist the agency in finding candidates for

the individual site-specific community working groups.

Mr. MENENDEZ. Who nominates the individuals to the commu-

nity working groups? The EPA, the State, the CIAOs, or who?

Ms. Browner. We established certain parameters which are spelled out in the statute in terms of ensuring racial and ethnic makeup, EPA would make the final decision. But there are param-

eters spelled out in the statute as to the composition of the commu-

nity working groups.

Mr. MENENDEZ. My concern is, having seen some of these similar operations in the past in which allegedly community groups were going to be involved, is that who appoints them determines the breadth and scope of the both racial and ethnic and demographic aspects.

Now, the recommendations of these community groups that they

would be making, to whom would they be making it?

Ms. Browner. I am sorry.

Mr. MENENDEZ. The recommendations that the community groups would be making, to whom would they be making those recommendations?

Ms. Browner. Either to EPA, if EPA had the oversight respon-

sibility, or to the State, if they had the responsibility.

Mr. MENENDEZ. To what degree under the legislation is their rec-

ommendations weighted, if any?

Ms. Browner, Substantial weight is given to their recommenda-

Mr. MENENDEZ. Is that the statutory language?

Ms. Browner. In terms of future land use, substantial weight is given to a community's consensus recommendations, that is the

proposed statutory language.

Mr. Menendez. Too often we find these sections that are an attempt to include the public but they are not meaningful, they are illusory to a large degree. I am wondering to what degree, for example, you would still have to live within the zoning code of that

municipality, right, in terms of community options?

Ms. Browner. At least 50 percent of the community working group members must be local residents. Mr. Menendez, I too share the concerns that you are voicing, that efforts in the past sought to create a structure such as this, has not been meaningful. We worked very closely with citizens organizations across the country on this particular part of the legislation. We wanted to hear from them about what they thought was necessary for inclusion in the statute.

For example, we wanted the parameters of the makeup of these working groups spelled out in the statute, to ensure that there

would be real and diverse participation.

Mr. MENENDEZ. Well, I hope that when we pursue this, that it will-real and meaningful and substantive, weighted participation—that will mean something to the people that have to continue to live there.

Mr. MENENDEZ. Thank you. Mr. APPLEGATE. Thank you.

Mr. Zeliff.

Mr. ZELIFF. Thank you, Mr. Chairman.

In spite of my strong statement relative to the Administrator's proposal, I would like to again thank you for being here and addressing our concerns. We have worked with EPA at the highest levels throughout the coarse of our task force. As you know, after you were appointed, we were down there for 8 hours, we spent time with your legal advisers and many others, Don Clay came up to New Hampshire, Bill Reilly came up, we had public hearings, Mel

Holman before he retired spent his time up there, and it was tremendous. The difference between the beginning of my involvement and the end was a full 180 degrees. So I want to pass that on.

We got help in working on some sites by working together at Dover, Somersworth, Holton Circle, Coakley. Just recently we were able to save the community a million dollars on a cap—good, solid management decisions using good information. It is not the way necessarily it has happened across the board, but I think that has been the problem here.

We have had a law for 14 years there has been tremendous mismanagement, waste, inefficiency, and I think what we all are try-

ing to do is trying to see what we have to do to correct it.

You mentioned helping small businesses, and the little guy. I might add that we have been dealing with a lot of those little guys. The de minimis settlements in 1986 were supposed to help. What my concern is that, you know, we really haven't gotten the message yet.

Are we really going to be able to follow through by making these changes? We had changes in the law before designed to do that. It

didn't work.

I think what we have got to be cautious of is just making ourselves feel good that something is going to happen and we still stay in the same mess.

Ms. Browner. We do not want to advocate changes that we think are not real. So in recommending changes we have looked at what is the appropriate statutory language necessary to ensure

that those changes are actually implemented.

In the case of small businesses, there are several specific changes that will help resolve their liability, there is an ability to pay provision for non-deminimis contributors, and EPA has a time certain deal with deminimis small businesses. There is very, very specific language that does not presently exist in the statute. We believe is an absolutely essential to ensure that these changes are fully implemented.

Mr. ZELIFF. There are some areas in your proposal that I certainly think make an awful lot of sense. In terms of more State involvement, at Pease Air Force Base we have a site there with 22 hot spots. I would say it is almost a model or is a model for cleaning up a site quickly, efficiently, and effectively, and EPA was helpful in terms of structuring a lease so we can get development mov-

ing while that cleanup was going on.

So letting States take a bigger role, letting communities take a bigger role, makes a lot of sense, and I think the further we get away from Washington and the closer to where the action is, that

makes sense in terms of accountability.

I want to go back to my retroactivity issue, if I can. I guess I just worry about having spent all the time we did with EPA, where everybody kind of shook their head and agreed and then all of a sudden we came out with a bill that doesn't address it. And in your first hearing last year you said that all issues were on the table for Superfund except retroactive site-specific, PRP financing and cleanups. Did you really seriously have an open mind, or did you start out from the beginning not willing to look at retroactivity?

Ms. Browner. No, there was, I would say, at least a 3-month debate within the administration over the issue of retroactivity. It was a lively debate. All options were put on the table. And I want you to know particularly, Mr. Zeliff, that your recommendations

have also been fully reviewed by the administration.

I think the process that you used in reaching your recommendations is a very, very important process. You did I think what we did, which is to reach out and involve people who have firsthand experience about Superfund sites. And when we reviewed your report, in making comparisons to the bill that is before the committee and your report, I think it is our sense, and I don't know what your sense is, but it is our sense that a lot of your recommendations are incorporated in the proposal. Obviously, the one that isn't included is the elimination of retroactivity.

But please know that it was an issue that was of great interest to the administration, and we did have an open mind, we did debate the issue. We came to a conclusion within the administration and that involved the Department of Treasury, the Council on Economic Advisers, the National Economic Council among others, that retaining retroactivity, retaining joint and several was important.

Mr. ZELIFF. I think that is important, because so many people spent so much time at no cost to the taxpayers to try to solve a

major issue. I appreciate your pointing that out.

I would like, if we could, to just address Treasury. I know that they were on record in the September 8, 1993 issue of "Superfund Report," stating that Superfund liability should be revised to eliminate strict liability based on status, joint and several liability, retroactive liability prior to December 11, 1980, and they go on to some other areas as well.

Maybe, Ms. Munnell, maybe you could just comment on this, and let me know what Treasury—where did it stop and where did it

begin?

Ms. Munnell. As Administrator Browner said, it was a very lively debate within the administration, and it is no secret that Treasury supported for a long time elimination of retroactive liability. From our view, initially it was an equity consideration, and it was viewed as unfair to make people responsible for cleaning up stuff they did when it was perfectly legal.

We examined all aspects of this issue. Administrator Browner talks in terms of hundreds of hours. I think it may have been thou-

sands of hours.

Our conclusion was that—there are really three big problems. One is eliminating retroactive liability. One is setting up a new public works program, which requires a lot of money to the private sector, which does it much more efficiently, to the public sector which does it much less efficiently. There is also this issue of fairness, where some people have already cleaned up pollution that was created before the passage of CERCLA.

There is also this very complicated issue of the sites contain some pre-1980 pollution and some post-1980 pollution, and distributing those shares equitably is a very difficult thing. But we did

not walk away from the retroactive liability issue.

The primary harmful effect of retroactive liability is all the insurance litigation between the PRPs and the insurance companies. So

what we tried to do was address that, the result of the retroactive liability issue through the establishment of the Environmental In-

surance Resolution Fund. I really do think that gets at—

Mr. Zeliff. I appreciate that and I appreciate your answer. I just think retroactivity is a basic issue of fairness in the United States. I just cannot comprehend how we as the Members of the United States Congress and you representing the agencies that you represent, that we can hold people responsible for something before the law was passed—it just goes against the grain of everything I believe in. I don't know of any other country in the world that believes that. I suppose we can come up with some, but particularly in enforcing environmental laws, it is unfair.

I spent 2 years on this thing, Mr. Chairman-

Mr. APPLEGATE. You are going to have another 6 months.

Mr. ZELIFF. Would you give my bill a hearing?

Mr. APPLEGATE. We are going to give a lot of bills hearings.

Mr. ZELIFF. Would you give our bill a hearing?

Mr. APPLEGATE. Which one is that?

Mr. ZELIFF. The bill we have submitted copies to everyone on the committee.

Mr. APPLEGATE. We will be holding hearings and you will have

an opportunity to present that. Mr. ZELIFF. Thank you, sir.

Could I hold the record open, if I could. I wanted to talk about your public works thing and the responses to some of your testimony. I am sending it to you.

Ms. Browner. Sure.

[The information follows:]

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CONGRESSMAN ZELIFF AND COSPONSORS OF HR 4161 RESPOND TO CLAIMS MADE BY EPA AND ADMINISTRATOR BROWNER

EPA: Abolition of retroactive liability would fundamentally transform the program from one in which 70% of response work is performed by PRPs to one in which 70% of response work would be performed by the Trust Fund, through a public works program.

FACT: Under H.R. 4161, PRPs would still be required to complete cleanup before being compensated for response costs from a new, dedicated "Retroactive Trust Fund." Far too little cleanup is occurring today largely because the current site-specific, litigation-based, adversarial financing system delays cleanup. We should replace that system with a mechanism that would put business money to work on cleanup, not fighting over who pays and how much.

EPA: Abolishing retroactive liability would require \$1.1 billion in new taxes.

FACT: Businesses are already being pounded time and again with Superfund costs, and most of the money they are spending does not go to cleanup, it goes to lawyers.

Those costs are not just absorbed by the PRP, they pass it on to consumers—
affecting their ability to compete, and when all added together, affecting American competitiveness in the global market.

Superfund is already imposing huge costs on everyone from states, cities, towns, churches, nursing homes, and businesses. If we can get EPA to finally drop this site-by-site warfare over fundraising, we can turn that money around and put it right into cleanup -- not battling over who did what and when.

EPA: Cleanups would be significantly more expensive under a trust fund approach.

FACT: The implication here is that we have an efficient system today — which no one other than EPA believes. Under today's system, EPA has no incentive to control any costs (either its own or the cost of remedies it imposes on private parties), since "PRPs will pay."

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- EPA: Elimination of retroactive liability would remove any incentive for voluntary cleanups for sites covered now by the public fund. Tens of thousands of voluntary cleanups occur now.
- FACT: There is no evidence that any multi-party NPL site has ever been voluntarily cleaned up. On the contrary, fear of Superfund liability acts as an impediment to voluntary cleanup and redevelopment at urban and industrial sites which are not on the NPL.
- EPA: Changing Superfund to a taxpayer-financed cleanup program and would create a huge public works program.
- FACT: This is absolutely untrue. As mentioned previously, no work would be done by EPA directly -- PRPs are still responsible for cleanup work. My bill does NOT raise money from general revenues, and therefore there is NO ADDITIONAL TAXPAYER MONEY GOING TO SUPERFUND CLEANUP.

Finally, we don't understand EPA's sudden objection to "huge public works programs." The EPA and Administrator Browner should be reminded of a few additional facts: in addition to the fact that today's testimony is in front of a subcommittee of the PUBLIC WORKS COMMITTEE, EPA currently, and under the Administration's bill, makes every key decision at every site, so that is already easily termed a "huge public works program."

The two huge differences between Superfund and the other public works programs under this Committee's jurisdiction are:

- 1. The others accomplish what they are meant to.
- The others don't spend more than a third of their money on lawyers, transaction costs, and fundraising.

Mr. ZELIFF. Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you.

Mr. Poshard.

Mr. Poshard. Thank you, Mr. Chairman.

We appreciate you being here, Administrator Browner. I just want to express three passing concerns, and then I need you to answer a separate question. But given the five-minute time frame—under Title V, as I read the language in the bill, I do believe that the presumption is made that all groundwater associated with the Superfund sites should be brought to drinkable standards. I think that is the way it reads, in case at some point in the future it may be used for that purpose.

I think that is a pretty stringent standard. Actually, it seems to me to be more stringent than even the Safe Drinking Water Act. That is my view, and I don't want to get into an argument about

it now, because we will have 6 months to do this, I know.

And also under Title V, it seems—and we got into a little bit of this on the Clean Water Act, but despite the fact that the agency currently defines protection of human health as a risk range, the current language in the bill directs the national goal must be set

at a single numerical standard.

And here again, I think that is a pretty exacting standard to be set and to be achieved, and I would hope that the form—you know, that the negotiated rulemaking process basically would determine whether a single numerical level or a risk range would be the most appropriate standard in the end. But it seems like the bill already makes that determination. Again, I don't want to get into a protracted discussion over it right now.

Also, I do believe that expanding the liability provisions under Title IV, Section 107, to include pollutants and contaminants as opposed to only the hazardous substances is going to be a very costly

venture if we have to be that broad in our definitions.

Now, the question I need you to answer is: What about incinerators in the future? You recently issued some rules, I believe, to deal with the 180 or so incinerators that we have in this country. Now, about 150 of those are industrial waste incinerators for energy—well, I thought EPA issued some rules or had intended to, maybe they didn't, but I guess what I am concerned about are the 30 or so commercial incinerators.

I personally believe that on balance, over the years, those have proven to be fairly safe, and accomplish a cleanup in a lot of places in a more expeditious fashion than other alternative cleanup meth-

ods may offer us at this point in time.

But I would like to know specifically how you feel about those commercial incinerators, what role they will play in the future in terms of Superfund cleanup.

Ms. Browner. Very briefly, if I might break incineration into a

series of categories, I think that would be helpful.

First of all, there are approximately 150, 160 facilities that burn hazardous waste today. They are cement kilns, industrial waste, et cetera. EPA is in the process of calling in each of those facilities to determine that they are conducting their business in accordance with strict standards that take into account both the direct and in-

direct health effects associated with those facilities burning hazardous waste. That is one category.

A second category are commercial facilities, facilities expressly

built for disposal and incineration of hazardous waste.

The third category are incinerators that are built on a temporary basis at individual Superfund cleanup sites. And I don't know—

there may be several right now in operation.

In the case of hazardous waste in the commercial facilities, we believe, this administration believes that the number-one goal should be waste minimization, that as a country we need to do everything we can to reduce the amount of hazardous waste which we are generating, and the administration and EPA has put forward a policy and we are seeking to implement that.

We also think it is important to ensure that the cement kilns are burning hazardous waste in accordance with the standards that are applied to commercial facilities, which in some people's minds has not been true over the last 6 or 7 years when this issue has come

to the forefront.

When you have achieved what you can through waste minimiza-

tion, then and only then is it appropriate to look to disposal.

In the case of the Superfund statute, the community working groups would have a real role to play in determining what is the appropriate cleanup methodology for their community. And I don't doubt that there will be communities who, when they become informed and educated, don't want incineration as the means of cleanup and would rather see another form, another methodology.

Mr. Poshard. The tech grants, the Technical Assistance Grants are important, but some people don't believe they are actually used for much more than affirming the EPA's decision that they have already made, which is fine. I mean, I don't want to argue that, because I think the bill does have more community involvement, and

that is important.

But where an ROD has already been issued on a site, and it has been determined that a temporary incinerator is the most efficacious way of disposing of the PCBs or whatever, does the administration or do you have anything to say at this point in time about whether, in fact, that should go forward or it should be pulled away or new rules should be promulgated for the use of those temporary incinerators?

Ms. Browner. One of the great concerns I have with the Superfund program is the fact that answers, solutions, if you will, are imposed on communities without their involvement, without their understanding. And so one of the sections of the bill that I think is key to a successful Superfund program is the community

participation.

EPA does not want to be in the position of telling communities this is the best answer for you. We want to be in the position of having a community tell us, based on good information, what they think is the right solution. And we think that getting these changes in the law will allow communities to do just that, allowing them access to the TAG grants much earlier in the process than they currently get them, bringing them into all of the decision-making meetings in a way that they are not presently.

And again, as I said, I believe there will be communities when they become involved who will reject incineration as the methodology for cleaning up the site in their community. And we want to respect that.

Mr. POSHARD. Thank you. Mr. APPLEGATE. Thank you.

Mr. Horn.

Mr. HORN. Thank you very much, Mr. Chairman. Delighted to have you here again, Administrator.

The Washington Post recently reported that the administration is planning to finance its welfare program by using part of the

Superfund taxes. What is the status of that proposal?

Ms. Browner. There are conversations under way within the administration in terms of budget and the welfare issues. I can explain—it is a complicated answer involving how budget caps work,

how the budgeting process works.

What you need to know, I believe, if I could say one thing about this, is in no way will funds that are available to the Superfund program because of the tax—there are three separate taxes essentially that make up the Superfund trust fund—in no way will funds be diverted from Superfund activities.

Mr. HORN. Well, then, are you saying that proposal is dead, or are they simply going to leave notes in the account as we do under Social Security and simply borrow the money but say when you

need it let us know and we will pay off the note?

Ms. Browner. Again, in part this has to do with budget caps, it has to do with how CBO scores things, when they look at how taxes expire, assumptions they make about programs continuing into the future, but the fact that they don't make similar assumptions about certain taxes continuing into the future.

I can ask Treasury who is responsible for these things to probably explain this, but I just want everyone on this committee to know that in no way will resources be taken from the Superfund

program.

Mr. HORN. Okay. It sounds a little like the Bush administration sitting on FAA trust funds to help balance the budget. It is not a new thing in this town. So you say it isn't going to be like that?

Ms. MUNNELL. Can I try to clarify a little, if possible?

You are right, it is under consideration now. No one has made any final decisions in this area. But I think the easiest way to think about it is that Superfund expenditures are in the baseline going forward. The Superfund excise taxes are also in the baseline going forward to cover some of these expenditures. The corporate environmental income tax is in the baseline only until the end of 1995. After that, the Superfund expenditures are currently covered by general revenues in the projections.

What happens is, when you extend the corporate environmental income tax, that gets matched up with the Superfund expenditures, and frees up general revenues to cover welfare, GATT, whatever.

Ms. Browner. Or anything. Ms. Munnell. Or anything.

Mr. HORN. Let me pursue some other questions, and you are free to answer these for the record, but let me get them on the record.

You noted, and I thought very impressively, that 70 percent of the cost of cleanups are paid by private resources. What percent of the total Superfund cost, besides the \$30 million going to Justice that you mentioned, goes to lawyers' fees? Does the EPA have an analysis of that?

Ms. Browner. We do, and we will provide you the specifics in

writing

[Subsequent to the hearing, the following was received from Ms. Browner:]

EPA provides the Department of Justice with approximately \$32 million per year to support Superfund activities related to judicial actions, including consent decrees and *I.litigation. This represents 2 % of the annual Superfund program budget of approximately \$1.6 billion.

No Superfund monies are used to pay for or reimburse private sector legal expenses incurred as a result of Superfund-related activities, such as contribution actions or insurance litigation. These costs are borne exclusively by PRPs and their

insurers.

Ms. Browner. Niether EPA nor Justice is involved in most of the litigation that transpires pursuant to the Superfund law. It is litigation, as we said before, that is going on between PRPs. The government is not involved. We are not using taxpayer resources the government is not involved.

Mr. HORN. Well, file it for the record.

What percent of the total cleanup funds, not just Superfund, go to the payment of lawyers' fees? Because we hear that charge, we are spending so much on litigation, nothing is getting done, the waste is still there, people are still endangered, and it seems to me there ought to be some creative ways to get the show on the road, whether it be an arbitration system, an administrative law system, something that gets on and ends the procrastination.

Ms. Browner. That is why we are recommending, an allocation

scheme that would rely on mediators rather than on lawyers. Mr. HORN. But it is nonbinding, as I remember, isn't it?

Ms. Browner. It is nonbinding but it is as close to binding as

you could ever get.

The concern about binding, so that people understand, is that you would be required under a, quote, "binding system" to use administrative law judges, which is an expensive undertaking.

We believe that you can get to the same place through mediators, which is a less expensive undertaking. Administrative law judges would have to become Federal employees and there are a series of

requirements associated with that.

But the bigger—there are two ways to think about the money being spent on Superfund. There is the money that government is spending, that is approximately \$1.5 billion annually, and then there is the money that the private sector is spending, which is a very large amount of money. A portion of that is actually going into cleanups. Unfortunately, another portion of it is going into lawyers. The government is not spending the \$1.5 billion or any significant portion of that on legal fees.

What is happening is that you are losing dollars for cleanups. We presume that a PRP has a set amount of money and they can either use that money for the lawyers or they can do the cleanups. If you can get the lawyers out of it, the dollars become available,

we hope, for cleanup.

Mr. HORN. Can you straighten that out for the record. [Subsequent to the hearing, the following was received from Ms. Browner:

The Administration prepared an economic analysis of Superfund reauthorization to support the introduction of the Superfund Reform Act of 1994 (H.R. 3800) on February 3, 1994. According to this analysis, PRP annual expenditures are approximately \$1.25 billion for cleanups and \$500 million for transaction costs. Attorney's fees are subsumed in the transaction costs figure, which was derived from a study conducted by the RAND Corporation (Dixon, Drezner, and Hammitt, Private Sector Cleanup Expenditures and Transaction Costs at 18 Superfund Sites, RAND Corporation 1993). The RAND study does not differentiate between attorney's fees and other types of transaction costs.

Mr. HORN. Mr. Chairman, I would like to have three questions basically submitted to the agency for response. I don't want to take any more time this morning. One follows up on Mr. Clinger's discussion with you on the potentially responsible parties. As you noted, \$21 million might be the cost of additional administration.

And obviously I would like to know, can you reprogram that, can you cut activities within the agency, or is this a \$21 million add-

Number two, I am interested in the flexibility to make de minimis settlements offers. And I will send you a question on that.

And lastly, under the new allocation process, the allocation of shares which is supposed to be done according to the, quote, "Gore factors," unquote, could you explain what those factors are? And we will submit that.

Ms. Browner. Thank you.

[Subsequent to the hearing, the following was received from Ms. Browner:

- (1)According to the economic analysis that accompanied the introduction of H.R. 3800, the liability reforms contained in the bill would require an additional \$21 million per year in PRP search resources. The economic analysis includes savings as well as additional costs for the Federal government and private parties.
- (2) During Congressional deliberations regarding reauthorization of CERCLA in 1980, then-Representative Gore proposed an amendment to H.R. 7020 that would establish guidelines for the apportionment of liability among responsible parties by the district courts. The amendment listed six factors, which have become known as the "Gore Factors," that a court could consider in apportioning liability,

 (a) The ability of the parties to demonstrate that their contribution to a discharge,

release or disposal of hazardous waste can be distinguished;

- (b) The amount of the hazardous waste involved;
- (c) The degree of toxicity of the hazardous substances involved;
- (d) The degree of involvement by the parties in the generation, transportation, treatment, storage or disposal of the hazardous waste;
- (e) The degree of care exercised, by the parties with respect to the hazardous waste, taking into account the characteristics of such hazardous waste; and
- (f) The degree of cooperation by the parties with Federal, State, or local officials to prevent any harm to the public health or the environment.

(126 CONG. REC. H9461 (DAILY ED. SEPT. 23, 1980)

Although the Gore Factors never became law, many courts have adopted them, along with considerations, for use in apportioning costs among liable parties in CERCLA contribution actions. The experience of the Agency and PRPs which have participated in CERCLA contribution actions indicates that the use of factors similar to those proposed by then-Representative Gore are appropriate to ensure equitable allocations are achieved.

Mr. APPLEGATE. Thank you very much, Mr. Horn. I appreciate that.

The gentlelady from Utah, Ms. Shepherd. Ms. Shepherd. Thank you, Mr. Chairman.

Thank you for coming here, Administrator Browner. It is a pleas-

ure to have you here.

As you know, I have more than my fair share of Superfund sites in my district, and we have talked many times about the need for community involvement. And I am very interested in these community work groups and would like to congratulate you for getting them into the law and the way that they appear to be there, with a significant amount of authority. And I see that as a very impor-

tant part of this.

My concern has to do—grows somewhat out of experiences we have had in Utah, and has to do with timing. We have, for example, a smelter site that is now a listing, and the city wants to be the lead agency, and it is a very responsible administration that is there right now, and they have planned for it and they are all ready for it. But the EPA says that this project could not begin until 1997. By that time there will be a new mayor, a new administration. It is impossible to look into the future and see if that will really work.

And I just wondered what your conversations have been around this disconnect between timing and the usual political process that is going on in all of our municipalities. Because they have to wait so long for things to be cleaned up, that they simply can't make their plans, and they can't do them, they can't see that far into the

future.

Ms. Browner. Obviously, we share your concern that it takes so long to actually commence activities. If I understand the site that you make reference to, as you describe it, everything has occurred, in terms of initial assessment plans and but the actual cleanup activities have not begun.

Ms. SHEPHERD. That is correct.

Ms. Browner. And I don't know why there would be that kind of delay. We are trying to see if we can find further information on this site. Perhaps we could work with you.

Ms. Shepherd. That would be great. It is the Murray smelter

site.

I guess let me just broaden this question so it will be more useful to the rest of the Members of this panel. Have you got the resources to do what you need to do in the time period that needs to be done?

I mean, I am hearing from everybody in my district and from my colleagues as well that this is all just terribly, terribly slow. And I would just like you to comment in general on that, and how you believe the reauthorization that you are suggesting would deal with that.

Ms. Browner. We agree and share the concerns that have been raised about the length of time associated with cleanups, and our proposals would significantly reduce the time associated with

cleanups.

I am not sure that we share the concern that you raise as to the availability of resources as being a reason for delay. As I said before, 70 percent of the monies spent on cleanup activities do not

come through EPA. They are from the private parties undertaking

their responsibility for paying for the cleanups.

Obviously, everything we can do to encourage that kind of activity is good in terms of expediting cleanups. The administration is not proposing that the current taxing scheme for the Superfund trust fund be changed. We believe that we can maintain the current levels of taxes, and yet see an increase in the number of cleanups undertaken and the speed with which cleanups are completed, in large part because we get the lawyers out of the system, the allocations can go more quickly, and we have greater consistency across the country. And the package as a whole, we think, speaks to those concerns.

Ms. Shepherd. Now, with regard to the community working groups, let's say that a cleanup—the Sharon Steel site, for example, has been 11 years—had there been a community working group forged at the beginning, it probably would have been totally turned over by now; you would probably be dealing with a new set of people in that lengthy period of time. How will the community working

groups maintain continuity?

Ms. Browner. Well, one cause of delay in the current system is the fact that the community is not involved from the beginning. We strongly believe that bringing the community in on the front-end, while it may take a little more time initially saves a huge amount of time in the end. What happens right now is that a decision is made, the community is informed of it, and then years are spent arguing about it. If the community had been there from the beginning, had come to understand exactly what all of the options were, had their own experts, had their own analysis, and was involved in the decision making, then many months and years that are now involved would be removed because they would be a part of the ongoing decision-making process.

The concern that there would be turnover in the makeup of the community working groups, is one that I don't think we share. We think that we are going to be able to reduce the amount of time associated with the cleanups, because the involvement of the community groups is going to be shorter than what it would be under

the current system.

Second, we believe that there is not the kind of population turnover in the communities affected by Superfund sites that perhaps we experience in other communities. And I personally know of people, who have been involved with Superfund sites in their neighborhoods for more than 15 years now.

Ms. SHEPHERD. Thank you.

And, Mr. Chairman, I would like permission also to submit a list of questions, if I might.

Mr. APPLEGATE. Yes.

[Subsequent to the hearing, the following was received from Ms. Browner:]

The Murray Shelter site is a high priority for EDA Region VIII. Shortly after proposing the site for inclusion on the National Priorities List and in response to a request from the Murray City government, EPA began planning an expedited investigation and cleanup process. EPA and the City of Murray have since established an arrangement whereby the City will have the maximum level of involvement afforded under CERCLA in all Superfund activities at the site.

The site is being addressed through the streamlined Superfund Accelerated Cleanup Model (SACM) process. In 1992 and 1993, Region VIII conducted extensive soil, water and indoor dust sampling in several residential communities within the City. The results of this sampling, designed to identify any emergency health threats, indicated that no time-critical response actions (e.g. evacuation) at the site were necessary. The sampling results did, however, indicate potential long-term threats to human health. EPA will address these risks through a non-time-critical removal investigation and cleanup process.

Immediately upon receiving authorization from the Murray City Council on July 15, 1994, EPA and the City began negotiating with the primary PRP connected to the site, ASARCO, for a fun site investigation. The Agency has, established an August 31, 1994, deadline for completion of these settlement negotiations. If an agreement is not reached by that time, EPA plans to unilaterally issue an order for the

investigation work.

EPA expects field investigation work to be underway by the fall of 1994 and, depending on, among other things, the level of cooperation provided by ASARCO, the Site Investigation could be completed by mid-1995. This would allow cleanup activities to be underway by the end of 1995.

Mr. APPLEGATE. Thank you, Ms. Shepherd.

I believe the Administrator has agreed to answer all the questions that will be submitted.

Mr. Ewing.

Mr. EWING. Thank you, Mr. Chairman.

Ms. Browner, I was pleased to hear your talk and explanation about how we are going to help some of the small people involved with this. In your explanation you kept referring to municipal landfills. Is it only those people who have contributed to municipal landfills?

Ms. Browner. No. I used that as an example. The opportunity for the tiny, tiny demicromis parties to get out is not limited to just

landfills.

Mr. EWING. I think all of us are concerned. We support the cleanup of the bad sites. The problems, and you can tell this from all the questions, concern whether we are spending our money wisely, are we really getting the job done? And being a lawyer, I get a little bit of a complex here today with all the talk about lawyers. They are a very important part of the system.

But you talked about a change from the EPA paying for it to the EPA going after those who are the perpetrators and asking them to pay for it. Many of the reports we get show how much has been

spent on litigation and how little has been spent on cleanup.

Does that take into consideration the amount of private dollars

that have been spent on cleanup?

Ms. Browner. Yes. When we talk about the numbers, we are talking about the universe, which is not just the Superfund trust fund, but also the private dollars that have been brought into the cleanup picture.

The \$8.3 billion has been spent on cleanups outside of the trust

fund or in addition to the trust fund.

Mr. EWING. Eight point three billion dollars? And that is not money spent on litigation, that is spent on cleanup?

Ms. Browner. That is correct. That is money spent or committed

to be spent on cleanup.

Mr. EWING. Do we have any idea what litigation costs have been? Ms. Browner. There have been several studies that look at litigation costs. I, too, am a lawyer and I understand your concern about our profession.

Ms. Munnell. Looks like 36 percent total costs have been on litigation.

Mr. EWING. Thirty-six percent of the 8.3?

Ms. MUNNELL. Of the total.

Ms. Browner. It is the total amount of money spent by private parties.

Mr. EWING. What would amount to that 36 percent, roughly?

Ms. Browner. We can respond in writing.

[Subsequent to the hearing, the following was received from Ms. Browner:]

According to Administration economic estimates, the private sector spends approximately \$1.75 billion per year on Superfund. Of this amount, approximately \$500 million or 29 % is spent on transaction costs, and \$1.25 billion or 71 % is spent on cleanups. Since litigation costs are subsumed in transaction costs, these percentages tend to overstate the amount PRPs spend on litigation and understate the amount PRPs spend on cleanup.

Mr. EWING. I think that——

Ms. Munnell. Just one figure. Overall private sector expenditures are approximately \$11 billion. That is through 1991. This is from Rand. Thirty-six percent were for litigation.

Mr. EWING. And that left the 8.3 for cleanup?

Ms. BROWNER. Right.

Mr. EWING. I think that most of us are concerned—and there has been some comment, Administrator, about the expansion of the formulas, the making the water drinkable, including other toxics—are we really concentrating on getting to the worst sites, getting them cleaned up? And, you know, an entitlement of sorts, as we are talking about here, worries many of us about expanding the definition, when we haven't cleaned up what we set out to do 15 years ago.

Ms. Browner. Very briefly, two things. First of all, we are not seeking to change the drinking water maximum contaminant level

standards. We think it is important to retain them.

Are we getting to the worst sites, yes, we believe resources are being applied to the worst sites. I think everyone is well aware that when this program first began 14 years ago, we thought there might be 4,500 sites. Some analyses suggest there may be tens of thousands of sites. The voluntary cleanup provision we think is very, very important to create incentives for people to go out and deal with all of these sites, that will probably never come into the Federal system.

And as long as we get these cleaned up, we think that we have a successful program. The measurement is getting these sites

cleaned up and put back to productive community use.

Mr. EWING. Are we controlling the creation of new sites in this

country?

Ms. Browner. I think perhaps the single most important factor in controlling the creation of new sites is the pollutor pays concept. When companies came to realize that there was a liability associated with failing to properly dispose of their hazardous materials, they began behaving very rationally.

Mr. EWING. Thank you. Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Ewing.

Mr. Laughlin.

Mr. LAUGHLIN. Thank you, Mr. Chairman.

Ms. Browner, the last time you were here I chastised you about a letter that I should have received and you acted surprised, and that was very appropriate. I had it. And I apologize.

Ms. Browner. Thank you.

Mr. LAUGHLIN. Rather than call you, I thought I would do this. Ms. Browner. These aren't the Clean Water people. These are the Superfund people.

Mr. LAUGHLIN. Make sure the Clean Water people know about

it.

Ms. BROWNER. Thank you.

Mr. LAUGHLIN. On the base closure question, I used to represent an area that had a base closed, and today they have more jobs on that site than they had when it was full-time military operations, so it is good. The handicap they have is in the area you discussed, and that is the waste sites that our government placed there, and is indeed responsible.

The people in that county tell me they would have more jobs there for their citizens if they could obtain the rights to the property with the exclusion of the waste sites that need to be cleaned

up, the toxic waste areas.

And it seems to me that we should be able to work out reserving those areas for Uncle Sam and the Air Force and Navy and the Army to clean up, or whoever is going to be responsible, the Federal Government, and deed the rest over, because there is not—Ms. Browner. We agree and, in fact—we need to talk to you spe-

Ms. Browner. We agree and, in fact—we need to talk to you specifically about this, because we have worked with the Department of Defense to craft a policy to allow exactly what you are suggesting to occur. I spoke to this previously.

We would be more than happy to sit down with you and discuss

it further.

Mr. LAUGHLIN. If you did that, it would certainly help the communities that have the bases involved.

Ms. Browner. We agree.

Mr. LAUGHLIN. And somebody new would be held like for the contamination.

With that, Mr. Chairman, I will submit my questions.

I thank you, Madam Secretary, for responding to my letter, and I just didn't realize it.

Ms. Browner. Thank you.

Mr. APPLEGATE. Thank you, Mr. Laughlin.

Mr. Quinn.

Mr. QUINN. Thank you, Mr. Chairman.

Welcome, I think, Ms. Browner, to the subcommittee.

Just in general for the benefit of all the Members on this committee, this has to do with a site in my district, the Pfohl Brother site, proposed for the National Priorities List. It was filed in May 1993, and that it was going to be shortly listed, and I think we notified your office we would be talking about this today, as a matter of fact.

Ms. Browner. Yes.

Mr. QUINN. Nothing has happened, it is delayed. In fact, a newspaper article in the Buffalo News this morning says that it is further postponed, maybe late 1994, maybe not until 1995.

We can talk about the specifics of this site in my district, but generally, can you comment on what is the hold-up? Is there a

backlog? Do we expect some word soon?

Ms. Browner. The process the agency is required to undertake in listing of a site is a complicated one. There is a Hazard Ranking System scoring, there is an opportunity for public comment, there is a review of the comment received. It is a process that does entails some amount of time.

The site you are particularly interested in, we believe will be listed sooner rather than later. I have been informed by my staff that you have been told that previously and listing has not occurred as yet. I will personally talk to them about what we can do, and if there is a problem, get back to you on exactly what the delay may be

For all the Members of the committee, the current process for NPL listing is a time-consuming process. It is not a simple one, two, three. There is a lot of work that goes into the scoring of the analysis to determine the appropriate score, as well as the review of public comments.

Mr. QUINN. I understand, and I appreciate the working relationship that we have developed with the department and our office.

Just to give you a glimpse of what the people back home feel about this, a quote from one of the articles says this morning that the residents of the community group that has been put together have heard different stories and they are hopeful that the Feds will come in to add some credibility to it, the whole discussion. So not only is this a question of timeliness, but it is also a situation where the Federal Government will be able, I hope, to put some umph behind all this. I checked my files this morning.

Ms. Browner. Do I owe you a letter?

Mr. QUINN. You do, but I double checked to make sure I didn't already have it. And I appreciate your comments.

Mr. Chairman, that is all I have.

Mr. APPLEGATE. Thank you very much, Mr. Quinn.

Mr. Oberstar.

Mr. OBERSTAR. Thank you, Mr. Chairman.

Welcome back, Ms. Browner. It is good to have you here and to see your enthusiasm throughout these nearly three hours of testimony.

Ms. Browner. I have come not to expect any less from this com-

mittee.

Mr. OBERSTAR. We have had some long-winded statements.

Ms. Browner. From me.

Mr. OBERSTAR. No, not from you. From our colleagues on this

I introduced the original Superfund legislation back in 1979, and I worked on our Public Works Committee for part of that process, pressed the Carter administration to get the Excutive Order not out, which they just barely did before the President left office. But what has happened to that program since then has made it unrecognizable to those of us who were in on the beginning. And I see some very great hope for a better program, better acceptance in the initiatives you outlined in your statement of the legislation that you are backing.

For me, the heart of making it work is getting the little guys out early, getting lawyers' costs out of the picture as soon as possible, and that money invested in cleanup as soon as possible, to improve the fairness of the program, not just the appearance but the reality

of fairness, and then to accelerate cleanup.

Those are the issues that jumped out in the several hearings I held as Chairman of the Investigations and Oversight Subcommittee, both here in Washington and out in Mr. Mineta's district and elsewhere around the country, and the report we produced. And from the experience I have had in my own district the Arrowhead Refinery, one of the most complex, if not the most complex issues, Superfund sites in the whole country.

Now, define for me, if not by words, by example, the demicromis—since Latin is now in favor after hearing President Clinton's award in Oxford yesterday, it was a delight to hear Latin

back in vogue. But is one quart of oil demicromis?

Ms. Browner. Yes.

Mr. OBERSTAR. Is one barrel of oil de micro minimis, in a site of

a number of acres, several thousand barrels?

Ms. Browner. The bill exempts from liability de micromis parties but distinguishes between contributors of MSW and Contributors of hazardous substances. A small business, a hundred employees or less, that contributed less than 55 gallons or the equivalent of one barrel or less of a hazardous substance, would be out. A

homeowner who contributed only MSW would be out.

Mr. OBERSTAR. How does a person establish liability or nonliability? Example, in the Arrowhead site, the government's case rested on records held by a driver who picked up and sometimes delivered stuff to potential contributors. Nobody could discern with any finality whether those slips maintained by this trucker, found in a shoe box, were pick-ups of oil or waste to be deposited at the refinery site or deliveries by that driver to a site.

And here is a case of a widow whose husband owned a gas sta-

tion, and there was a slip in the shoe box, "one quart of oil."

Ms. Browner. She is out.

Mr. OBERSTAR. Nobody knows whether he bought it from her or took it to her.

Ms. Browner. It doesn't matter. She is out. She is protected.

Mr. OBERSTAR. Who is going to pick the allocators? Great idea. Who picks them?

Ms. Browner. They would be people with experience in mediation and in the Superfund program. After selection, they would be hired by the agency.

Mr. OBERSTAR. They would be picked by EPA?

Ms. Browner. Excuse me, in general, there is a list of qualified allocators maintained by the agency. PRP can make additional recommendations of qualified allocators. They vote to choose the allocator with EPA participation on behalf of orphan share parties.

Mr. OBERSTAR. The PRPs choose?

Ms. BROWNER. From a list.

Mr. OBERSTAR. All right. And a list supplied by-

Ms. Browner. By the agency.

Mr. OBERSTAR. By EPA. Very much like any other mediation process.

Ms. Browner, Exactly.

Mr. OBERSTAR. After the various contributors have been approached and asked under this proposal to—under this legislation, rather—to accept their designated allocation, and some decide that they won't, then the joint and several liability section kicks in.

Ms. Browner. Right.

Mr. OBERSTAR. They then will be proceeded against by EPA or by the other PRPs?

Ms. Browner. By the Environmental Protection Agency. We will

assume the responsibility that a PRP currently undertakes.

Mr. OBERSTAR. That is right.

Ms. Browner. The nature of the system proposed is that joint and several liability is retained as a hammer to bring people to the table.

Mr. OBERSTAR. After that process is under way, what is the appeal situation? EPA goes after the person who does not sign an allocation, says we assess you X dollars of responsibility and that party says, No, you don't. We go to court. Is that still an option?

Ms. Browner. That is right.

Mr. OBERSTAR. Does it bring the process to an end?

Ms. Browner. Ten parties come to the table in a mediation. Nine of them sign an agreement saying, okay, we accept this responsibility, particular to each of them. The one party who chooses not to then can move into a judicial proceeding, but joint and several liability attaches.

Mr. OBERSTAR. You think that is going to be a disincentive to go

to court and an incentive to settle?

Ms. Browner. Absolutely. Yes, because your bottom line will probably be bigger if you leave the mediation process than if you

stay in.

Mr. OBERSTAR. I haven't read the exact language. I just want to be sure that it is ironclad. If there is an escape, then we are going to have this proliferation of lawyers. I think in the Arrowhead site issue, lawyers have been paid more than the cleanup will cost.

Frankly, I find that—and this is not a criticism of you. You are new on the scene. We have had 12 years of experience with this before this administration came in town. It hasn't been very well

managed.

Ms. Browner. A combination of factors have brought us to this point. As you said, 14 years ago, we didn't understand the magnitude of the problem, we didn't understand the solutions, we didn't understand the mechanisms for securing those solutions.

What we need to do now is, based on our experiences, both positive and negative, is develop a program that will get the job done

in the most cost effective manner.

As Ms. Munnell spoke to earlier we have looked at all of the proposals that were put forward in terms of fixing Superfund and found that in some instances, you are right, all they did was change the nature of the litigation. They may have solved the current litigation problems, but created another type of litigation.

We believe that the allocation scheme we are have recommending gets rid of the vast majority of litigation, particularly for parties who are willing to act in good faith. If someone is recalcitrant, if someone doesn't want to act in good faith, then the hammer is there.

Mr. OBERSTAR. It looks like that is what you have constructed. But I have seen lots of good-looking legislation that turns out ugly in the administration. And so I hope you will be around long enough to administer the law to which you have given birth.

Ms. Browner. I hope to be.

Mr. OBERSTAR. Thank you for responding to those questions.

Mr. APPLEGATE, Mr. Hamburg.

Mr. HAMBURG. Thank you, Mr. Chairman.

Thank you, Administrator Browner, for being here. As you can tell by looking around, this has almost come to an end, and the bells are ringing, so we have to vote.

I think the question I want to ask you is relatively simple. It has to do with the natural resource damage assessment provisions. I understand that in the original cover letter that the administration sent along with the Superfund bill, that it was discussed in that letter that there is still work going on in these NRDA standards, and I just wonder what the status is of that effort.

I know that the four departments that are most concerned, because they are the natural resource trustees under CERCLA, have had a couple of issues that they have raised, one regarding statute of limitation provisions for both MPL and non-MPL sites, and also with respect to the availability of scientific data to the general public, and the confidentiality of that during court proceedings.

Those are two of the issues that have been raised. I am just won-

dering what the status is of those NRDA discussions.

Ms. Browner. Those discussions are still ongoing. As you point out, this is a very complicated and complex issue. There have been

discussions ongoing for some time now.

The administration came to believe that it was so important to see the Superfund law reauthorized this year that we came forward with a package that did not include those issues, and we are continuing to work to see what are an appropriate series of recommendations with respect to those issues.

But again, we think that the package that you have before you, even without those issues, is one that is worthy of strong and we hope positive consideration, so that we can go ahead and make the changes and the fixes in the program that we think are so impor-

tant.

Mr. HAMBURG. So you are suggesting we would go ahead and pass the CERCLA bill without having NRDA provisions clarified?

Ms. Browner. That would be a possibility if closure was not reached on these issues and it could be addressed next year, perhaps. The discussions are ongoing and we could give you a status report on of where they are in writing, if that would be helpful.

Mr. HAMBURG. I would like to ask you to submit for the record

a status report on those NRDA discussions.

Ms. Browner. Certainly.

[Subsequent to the hearing, the following was received from Ms. Browner:

The Administration has had discussions within the Executive Branch concerning natural resource damages but has not developed a formal position on these issues and is not submitting a legislative proposal for reform at this time.

Mr. HAMBURG. Thank you very much.

Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you very much, Mr. Hamburg.

And to all of us who are left, thank you.

Ms. Browner, thank you very much, along with Ms. Munnell. Thank you very much for appearing before the committee.

[Whereupon, at 12:50 p.m., the subcommittee was adjourned.]
[Subsequent to the hearing, the following was received from Ms. Browner:]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS

SEP 6 1994

Honorable Bud Shuster Committee on Public Works and Transportation United States House of Representatives Washington, D.C. 20515

Dear Mr. Shuster:

Enclosed please find the Environmental Protection Agency's responses to questions arising from the Committee's June 9th hearing on H.R. 3800, the Superfund Reform Act of 1994.

The responses to your questions were prepared by the Environmental Protection Agency's Office of Solid Waste and Emergency Response, the Office of Enforcement, and the Office of Administration and Resources Management.

I hope this information will be helpful to you. Please contact me if there are any additional questions or concerns.

Sincerely,

Thomas C. Roberts

Director

Legislative Analysis Division

Printed on Recycled Paper

Questions from Honorable Bud Shuster From HPWT Hearing on June 9, 1994

1. QUESTION: One of the key components of the bill is a significantly expanded role for local citizens and community leaders. The bill contains a major expansion of the Technical Assistance Grants (TAGs) program and new funding for Community Work Groups and Citizen Information and Access Offices (CIAOs). Could you tell the Committee what these new or expanded programs are likely to cost and how they are to be paid for.

ANSWER:

The estimates for community involvement are \$50 million per year for the CIAOs based on an average grant of \$1 million per State. The expanded Technical Assistance Grant (TAG) program is estimated to cost as additional \$56 million per year. These amounts will be paid for out of the Superfund Trust Fund.

2. QUESTION: Could you also elaborate on the expansion of the TAG program (the \$60 million authorization and the eligibility of non-NPL sites)?

ANSWER:

Local communities are affected directly by the contamination and the cleanup decisions at a site. As a result, community involvement should be an integral part of a successful Superfund program. An improved TAG program is a key mechanism to encourage and facilitate such involvement. The Agency's experience in awarding approximately 150 TAGs for NPL sites demonstrates that TAGs are effective in providing citizens affected by a Superfund cleanup a means to obtain independent, lay-language interpretations of cleanup data and studies which EPA uses to make decisions on remedial actions. TAGs prepare citizens to provide informed, meaningful comments on EPA's proposed Superfund remedies. To ensure that communities are actively and meaninfully engaged at a large percentage of Superfund sites, the TAG program will be expanded and changed in a number of ways to increase access by affected community members. First, reviews will be conducted to ensure that application procedures for the grants are "user friendly". Second, for the first time, TAGs will be available at non-NPL sites. Third, the amount of TAG program funding is dramatically increased.

It should be noted that financial requirements such as matching funds and a cost reimbursement approach have been eliminated. As a result, TAG recipients will not have to raise funds or ensure " in kind services" and can receive funding of up to \$5K in advance of expenditures. This change will be especially helpful to low income communities.

3. QUESTION: The bill contains a number of provisions on "environmental justice." As I understand it, these provisions are based on assumptions that Superfund sites surrounded by minority populations are not receiving the same level or pace of cleanup as those in more affluent, white communities. It is my understanding that EPA has undertaken a fairly detailed empirical study of 300 NPL sites to test the validity of this assumption. What studies have you done and what are the results of the studies conducted thus far?

ANSWER:

The level or pace of Superfund cleanup is not the only basis for the environmental justice provisions of the Superfund Reform Act of 1994. Other issues, such as multiple risk, faced by minority and low income communities and the strong views of citizens living in these communities also led the Administration to include the environmental justice provisions in the bill. EPA has several studies underway to help us better understand the nature of these complex environmental justice issues.

The EPA Office of Solid Waste and Emergency Response has gathered information on 300 NPL sites to determine if there were trends in the time it took to complete clean-up activities at minority, non-minority, low income, and high income sites. The preliminary findings of the analysis were inconclusive.

The Agency has decided to complete the analysis for all sites on the NPL and to include removals at NPL sites in our analysis. In addition, the Agency is going to analyze the durations and types of response actions at a select group of sites where the Regions have identified minority or low-income community groups within the communities surrounding Superfund sites. When the results of these studies are complete, the Agency will share this information with the committee.

4. QUESTION: As I understand your proposal on "environmental justice" the agency will look at contaminants other than the specific contaminants at the site (lead based paint or lead from leaded gasoline in the area rather than specific lead contamination at the site). These additional external risks will be considered in ranking the site for listing on the National Priority List. EPA will look at the totality of environmental risk, not just the risk from hazardous substances at the site. I also understand that these outside hazards will not be considered for cleanup of sites. What assurance can you give me that the Superfund program will not be used for remediation of these "environmental justice" risks?

ANSWER:

Under the bill, EPA will be able to consider multiple sources of contamination regardless of source in placing sites on the NPL. This approach will require risk to the same population, rather than risk from the same chemical. In other words, consideration of a history of exposure will not take the form of determining risk posed by "like" or the same contaminant from various sources (e.g., lead from paint, emissions, abandoned sites, etc.) Instead, special consideration will be given when multiple sources exist and there is a sustained or continuous history of exposure to the same population.

EPA's authority to address environmental justice sites will be appropriately constrained by authority under existing law.

5. QUESTION: What safeguards will there be to ensure that NPL listings and cleanups not become "politicized" under the guise of "environmental justice"? Will there be specific, scientific criteria and guidelines or will EPA have broad discretion to make up a definition of environmental justice as it goes along on a site-by-site, subjective basis?

ANSWER:

Guidance will be developed to establish criteria and set a framework for making decisions. In terms of defining "environmental justice", PA is working to create parameters to define environmental justice concerns. The Agency is currently using and evaluating several tools to create these parameters. These tools such as the Geographic Information System (GIS) and other information management systems focus on demographics, pollution sources and geography. The Agency plans to establish guidelines for identifying communities with environmental justice issues that ensure a measure of flexibility while contributing consistency across the Regions.

6. QUESTION: Superfund has been widely criticized for the use of conservative assumptions in conducting risk assessments which are layered on top of other conservative assumptions. What assurance do we have that EPA will not adopt highly conservative assumptions in the conduct of risk assessments under the new remedy selection process -- particularly where there is continuing scientific uncertainty about toxicity or transport and fate of contaminants?

ANSWER:

There are three features of the Superfund Reform Act (HR 3800) as reported by the Committee on Energy and Commerce which would provide assurance that highly conservative risk assessment assumptions will not be utilized. These include: (1) the process mandated to develop the protocol and national goals; (2) the use of a standardized approach called for to promote consistent risk assessments and cleanup levels at sites; and (3) revisions to the remedy selection process.

- (1) The national risk goal and the risk protocol are to be developed using a negotiated rulemaking process. This will ensure that all stakeholders with a range of opinions on the level of conservatism appropriate for the conduct of risk assessment and risk management will have an opportunity to provide input so that a balanced approach to estimating and managing risks can be achieved.
- (2) The national risk protocol would require that standardized exposure scenarios and pathways for a range of restricted and unrestricted land uses be developed. The proposed bill specifies the types of variables that will be included in standardized equations for addressing these pathways. This will provide a consistent level of clean up and protectiveness at sites and could be designed to prevent overly conservative exposure assumptions from being layered on top of each other.
- (3) Finally, the remedy selection process provides for remedies selected at individual facilities to be protective of human health and the environment and provide long-term reliability at a reasonable cost. Efforts to place cost considerations on an equal footing with other remedy selection criteria will help ensure that overly conservative risk assessments that might result in unreasonably costly remedies will be avoided.

7. QUESTION: Your testimony indicates we would need to raise an additional \$1.1 billion to replace the 70% that is currently being paid for by PRPs. Do we know what portion of that 70% is attributable to the pre-1986 discharges? Pre-1981 discharges? Discharges occurring more than 50 years?

ANSWER:

\$1.1 billion per year represents the additional appropriations that would be needed to pay for acts of disposal that occurred prior to 1981. This figure represents approximately 70% of all PRP monies spent on cleanups.

99% of all waste disposal activities occurred prior to the passage of SARA in October 1986. Abolishing liability for acts of disposal that occurred before 1987 would require approximately \$1.5 billion per year in additional appropriations.

Due to the lack of site-specific data on waste disposal activities that occurred 50 years ago, the Agency cannot provide a reliable estimate of how much waste was disposed prior to 1934.

8. QUESTION: You indicate that PRP's performing cleanups have an incentive to control costs. That may be, but I believe part of the criticism of the existing system is that the Federal government, which decides how much cleanup will be required, doesn't have enough of an incentive to control costs. Wouldn't a program that shifts those costs to the Federal government create an incentive for the Federal government to control costs.

ANSWER:

A program which shifts the costs of Superfund remedies to the Federal government would actually increase cleanup costs.

PRPs who have participated frequently in the Superfund process have indicated to us that they can conduct cleanups at costs approximately 20% cheaper than the federal government due to Federal procurement requirements. With PRPs conducting 70% of the cleanups, shifting those cleanups from the private sector to EPA could increase, rather than decrease, the actual costs of cleanups.

9. QUESTION: What has been the agency's experience in getting full participation of major engineering and design and construction firms to participate in state-of-the-art cleanup efforts? Are current bonding and indemnification provisions adequate or do we need to look at further changes to the liability system applicable to response action contractors?

ANSWER:

The Superfund program has been fairly successful in applying innovative technologies at Superfund sites. As of the end of FY 1993, 249 cleanup projects are using one or more innovative technologies. Over 100 technology developers are participating in the Superfund Innovative Technology Evaluation (SITE) program.

Indemnification has not been a barrier to obtaining contractors in the two years since the Final Indemnification Guidelines were issued. EPA is currently competing the next generation of large architect and engineering cleanup contracts and, although as yet no problems have been identified, we have not completed procuring these contracts.

The amendments to Section 119 to include surety bond providers as response action contractors eligible to receive indemnification has resulted in their willingness to participate in EPA's cleanup efforts. EPA endorses recommendations to remove the sunset provisions in the surety bond provisions of Section 119.

10. QUESTION: Please tell the Committee how much we are currently spending at Superfund sites and how much we expect can be saved if the Administration's proposed hill is enacted.

ANSWER:

For National Priority List (NPL) sites where EPA pays for all response work, the average cost of remediation is \$25 million. The vast majority (\$22 million) goes toward implementation of the remedial action. We estimate that the Administration's Superfund Reauthorization Act legislative proposal will produce RA cost savings of approximately 25 percent. Additional savings are also expected for site characterization and analysis work. Combined, these savings would be approximately \$5 million, reducing average NPL site response costs from \$25 million to \$20 million.

11. QUESTION: Aren't the cleanup delays in the existing process caused by disagreements over remedy selection rather than over liability? Do you realistically expect that reducing the average cost of cleanup to \$20-23 million will make companies more eager to go forward with cleanups?

ANSWER:

Delays in cleanups in the existing process have several causes. In a 1990-91 study of the causes of delay in reaching remedy selection (Record of Decision), and initiating Remedial Design (RD) work, the following factors were most prominent:

For RODs:

- 1. State and Local Government concerns (25%)
- 2. Site Sampling issues (20%)
- 3. PRP Issues (15%)
- 4. Others (<10%, total 40%)

For RDs:

- 1. Consent Decree Issues with Dept of Justice (21%)
- 2. PRP Issues (20%)
- 3. Others (<15%, total 60%)

For RODs, just nine (9) percent of delays were identified as "Treatment/Technical" issues, and just three (3) percent of RD delays were so identified. Therefore, we believe that disagreements over liability are a more significant cause of delay and that by reducing the cost of remedies, some of these delays will be reduced.

A greater incentive for private parties to conduct cleanups is the provision of the Superfund Reauthorization Act for Fund-financing of the "orphan share" of enforcement-lead projects and an allocation of responsibility according to the relative contribution of PRPs. Combined, we believe these changes will significantly improve the "fairness" of Superfund liability and thereby mitigate project delays in the current process.

12. QUESTION: "Doesn't EPA currently have authority to use a non-binding allocation of responsibility . . . under existing law: Couldn't they use essentially the same process as you are proposing now? Why is it that only a few NBARs have been undertaken? Why will it be any easier if we enact this bill?"

ANSWER:

The Administration bill proposes a fundamental shift in the way potentially responsible parties divide Superfund response costs among themselves. It steers private party disputes over their cleanup cost shares from the courtroom to an informal administrative forum presided over by a private neutral experienced in such disputes. The bill's proposed allocation system is the linchpin for achieving two fundamental results: First, to cut back decisively the transaction costs which arise from today's "contribution" litigation in which PRPs argue over their Superfund cleanup cost shares; and, second, to diminish the harshness of Superfund's joint and several liability scheme while preserving the statute's persuasive incentives for PRPs themselves to conduct cleanups.

Current authority for providing nonbinding preliminary allocations of responsibility ("NBARs") is permissive not mandatory. In addition, it calls for the government to develop the NBAR rather than a neutral party. Most important, the current NBARs authority provides no incentives to accept the results. In contrast to the current NBARS authority, the Administration's proposed allocation system is the centerpiece of its comprehensive proposed liability reforms. The allocation is mandatory at most sites. In addition, the allocation system provides PRPs strong incentives to participate. Only participating PRPs: 1) will be permitted to settle their liability to the United States on the basis of an specified cost share, with the opportunity to receive a release from all liability in appropriate cases; 2) will be eligible, if they perform cleanup, for reimbursement of the value of the work which exceeds their cost share; and 3) will be eligible for governmental payments of the "orphan share" as defined in the Administration bill.

13. QUESTION: Haven't you allowed PRPs to step forward and request, on their own, that a non-binding allocation process be employed? How many times has this voluntary process been employed?

ANSWER:

Section 122 of CERCLA authorizes EPA to prepare guidelines on how to perform preliminary non-binding allocations of responsibility (NBARs). EPA issued these guidelines in May 1987 and the Agency has prepared 5 NBARs. Unlike the allocations provisions in H.R. 3800, NBARs do not provide funding for orphan shares. Under the NBAR guidelines, orphan shares were reallocated to viable parties.

14. QUESTION: To what extent does this voluntary and non-binding allocation process "bind" the Federal government? Do you or others in the Administration (Justice) have concerns about the wisdom or constitutionality of the process if it is binding? Do you see a problem with PRPs willingness to settle if the Federal government is not bound?

ANSWER:

The Department of Justice has been asked to provide a response to this question.

15. QUESTION: The Washington Post recently reported that the Administration is planning to finance welfare reform using a part of the Superfund taxes. What is the status of that proposal?

ANSWER:

The Administration will use all Superfund taxes to address Superfund sites. Superfund is connected to welfare reform from a budget scoring standpoint only, as detailed in the attached letter. Revenues dedicated to the Superfund program will not be used for non-Superfund purposes.

16(A) QUESTION: Two of the chief culprits [causing high transaction costs] appear to be retroactive liability and joint and several liability. How can there be meaningful reform without addressing each in some significant way: Will the private allocation system (included in HR 3800 as an effort to address joint and several liability) create more harm, more delay since the allocation isn't binding. Please comment.

ANSWER:

The Administration bill contains reforms in the operation of the Superfund program which are absolutely fundamental. For example, the new proposed allocation system will reduce private party transaction costs by steering disputes away from the courtroom and into the private administrative forum, and it will diminish the harshness of joint and several liability by permitting liable parties to settle with the government based on an allocated share of cleanup costs, and by having the government pay for orphan shares. The Administration bill retains retroactive liability for several reasons, as Treasury Secretary Bentsen outlined recently before the Senate Environment and Public Works Committee. The elimination of retroactive liability would have the following consequences among others:

16(A) cont.

- It would transform the Superfund program from one in which liable parties perform 70% of cleanup to a massive public works program in which the government performs at least 70% of cleanups;
- It would shift responsibility for \$1 billion in cleanup costs from private to public hands. This would increase the cost share borne by the states by \$100 million.
- It would immediately make the program far less efficient, based on Congressional Budget Office estimates that private party cleanups are 20% more efficient than cleanups conducted by the government;
- It would reduce incentives for voluntary cleanup of sites.
- It would remove incentives for private investment in innovative technology research -- ways to achieve cheaper and better cleanups.
- It would punish those who complied with their environmental responsibilities under current law, and provide a windfall for parties who did not cooperate in cleaning up sites; and
- It would introduce yet another dispute for litigation, i.e., whether the act of disposal occurred before or after the liability cutoff date.

As discussed in a previous response, the allocation system is intended to provide a speedy, efficient mechanism to allocate Superfund cleanup cost shares among liable parties. The Administration bill contains persuasive incentives for private party participation in the allocation system. In our view, such a non-binding system is the best way to reduce delay since it avoids the pitfalls of litigation.

16(B) QUESTION: Is there any reason to believe the Gore factors will be applied more successfully than they have been in the past? Isn't there the potential for a lot of gridlock negotiation with the only difference that it takes place in the context of a third party allocation rather than a court room?

ANSWER:

The experience of PRPs which have utilized ADR professionals to assist in allocation efforts indicates that application of factors similar to the Gore Factors has proven to be an

extremely effective guide for allocating Superfund site costs. Where private allocations have not been attempted or have proven unsuccessful, the Gore Factors have been applied by some courts to allocate responsibility among parties during the contribution phase of a CERCLA action.

Unlike current law, the Superfund Reform Act mandates application of the Gore factors in the allocation process, which will form the basis for resolving liability to the United States. Thus, the bill will by definition result in more successful and more frequent application of the Gore factors. By requiring allocations, based on judicially accepted equitable factors, at the pre-litigation phase of the CERCLA process, the chances for early settlements will greatly increase, and transaction costs will be severely reduced. Several factors, including the mediation skills of the allocators, will discourage any gridlock in the allocation process. In addition, the informal and confidential nature of the allocations will promote free and frank discussion among the parties. Such an atmosphere will make the process of determining each party's responsibility more efficient and cost effective than could be accomplished in a formal court action.

16(C) QUESTION: What if the following additional factor was added to the current list of "Gore factors": the lawfulness of the person's conduct at the time of the disposal or release? Please comment.

ANSWER:

The Superfund Reform Act already directs the allocator to consider the defendant's behavior (including the degree of his involvement in the handling of the hazardous substance, and the degree of care he exercised with respect to the hazardous substance) in determining the defendant's share. Indeed, two of the seven listed factors are expressly devoted to these issues.

Proof of illegal or culpable behavior may be impossible at many sites. Superfund addresses the results of acts that frequently took place many decades before cleanup. For this reason, documentary evidence often is scarce; witnesses are unavailable or have incomplete memories; it may not be clear what law -- including state law, a local code, or common law (such as nuisance) -- if any, applied to the act in question; and, if some law was applicable, it is often not clear what it permitted and what it prohibited.

17. QUESTION: Have you calculated the increased transaction costs to EPA from: running an expedited settlement process; pursuing all recalcitrant PRPs; paying the shares of the latter to settling PRPs who do the cleanup work?

ANSWER:

The Administration has estimated that performing additional PRP search work to support the allocations process and the early settlement program (i.e., de minimis, municipal solid waste contributor, and ability to pay settlements) would require an additional \$21 million per year. The Administration has also estimated that by taking on sole responsibility for pursuing non-settling parties, the Department of Justice would require an additional \$15 million per year. EPA anticipates that any transaction costs incident to reimbursing work parties would be subsumed in the \$15 million required to pursue non-settlors.

Under the current statute, settling PRPs negotiate with EPA for the full cleanup cost; then the settling PRPs pursue the non-settling PRPs for their fair share. The proposed changes to the statute allow PRPs in the allocation process to settle with EPA for their share only. EPA would then pay the share of the non-settling PRPs through mixed funding. EPA and DOJ would then pursue the non-settling PRPs for their share of the cleanup costs and to cover all orphan shares at the site. In addition, the non-settling PRPs can be pursued for ;the cleanup cost of settling PRPs using joint and several liability. Therefore, the costs to EPA are fully expected to be recovered, leaving no cost impact in a steady state analysis.

18. QUESTION: Under the current system, cleanups (from beginning to end, are averaging between 10 and 20 years. If H.R. 3800 is enacted, what is the projected length of time for cleanups? What safeguards are there to ensure that an improved, streamlined process remains so?

ANSWER:

Current program data indicates that it takes approximately 10-12 years to address a site from NPL listing to final remedial action completion. Because of our desire to improve on this, over two years ago EPA developed and began pilot testing the Superfund Accelerated Cleanup Model (SACM). Its goal is to streamline and accelerate the Superfund response process. Many aspects of H.R. 3800 provide a statutory endorsement of this approach; some of the key elements and their expected time savings are highlighted below. We believe that their origination as "bottom up" program improvements provides much assurance that they will be implemented with the goal of streamlining the process intact.

The proposed streamlining measures, in total, are estimated to save approximately 10 to 20% of the time now spent (1 to 2 years). The following outlines how each component contributes to the overall time savings assumption.

National Risk Goal Protocol - The proposal calls for development of a national risk goal and national risk protocol to standardize how cleanup levels are developed, which should facilitate more focused sampling and more expeditious risk assessments. This type of work is primarily performed in the Remedial Investigation/Feasibility Study (RI/FS) portion of the remedial pipeline. It is anticipated that the duration of the RI/FS would be reduced by 3 months.

Generic Remedies - The development of generic remedies will provide a narrow range of alternative response actions for specific classes of sites. Limiting the number of remedies that must be evaluated in the FS phase of the pipeline, as the Record of Decision (ROD) is developed, accelerates site response about 3 months.

Enhanced Community Involvement - The proposal will foster across-the-board early and increased community involvement in site response actions. While our pilot test experience provides evidence that such community involvement often contributes to speedy site cleanups, in some cases, a longer/contentious site cleanup process is linked to broader community participation. As a result, a net time savings of approximately 3 months is assumed during the site response process.

<u>Less Preference for Treatment</u> - The proposal eliminates the current mandate to "utilize permanent solutions . . . treatment to the maximum extent practicable," emphasizing long-term reliability instead, and narrows the preference for treatment to apply only to hot spots. The results of a durations analysis of treatment versus containment remedies indicates approximately 3 months time savings.

Increased Early Action Authorities - Superfund Early Action dollar and duration limits are revised in the proposed bill. The dollar ceiling and project duration were increased, thus making the early action site cleanup strategy more feasible. The aggregate affect of employing the early action strategy with, any one or all of the aforementioned components, would provide 1 to 2 years time savings.

- 19. QUESTION: (A) Many have criticized EPA's current program for ground water restoration as problematic, expensive and unrealistic. Eighty-five percent of sites require ground water cleanup. In many cases there is no reasonable expectation that the ground water is a source of drinking water and pumping and treating could go on forever without any significant impact. What specific changes are there in this legislation to address this problem?
- (B) The provision also sets the goal of remediation to attain non-zero Maximum Contaminant Level Goals (as set out in the Safe Drinking Water Act). I understand that MCLGs can be more stringent than the drinking water standards at the tap. Can we really afford to require Superfund cleanup levels for ground water that are more stringent than levels that might apply to tap water?

ANSWER:

(A) Ground water contamination is a widespread and complex problem nationwide, and EPA acknowledges that solving this problem will not be simple. EPA also recognizes that total cleanup (restoration to drinking water quality for Class I and II aquifers) may not be technically practicable throughout the entire contaminated plume at all sites. The current Superfund regulatory framework allows for the waiver of (ARAR-driven) cleanup levels for reasons of technical impracticability; this waiver can be justified on the basis of engineering infeasibility or inordinate cost. Waivers can, and have been, invoked at the time the ROD is written, or after a remediation system has been put in place and shown to be unable to reach the cleanup levels.

EPA also recognizes that Superfund ground water policies have evolved considerably over the past 14 years as a result of our program experience and through developments in the science of ground water remediation. In October of 1993, EPA issued the "Guidance for Evaluating the Technical Impracticability of Ground-Water Restoration" which discusses the state of the science and how EPA expects to make ground water remedy decisions at our most technically challenging sites. This guidance is still in the process of being implemented, and we anticipate that it will further assist us in making sound ground water remedy decisions.

There are a number of ways in which the bill further improves our approach to ground water remedy selection. First, the bill retains the ability to make a finding of technical impracticiability. However, it further clarifies that these decisions should be made by EPA prior to installing a full scale remediation system whenever possible, such that resources are not inappropriately expended on ground water restoration. The bill also requires EPA to reissue guidance on making technical impracticability determinations within 18 months of enactment.

Second, the bill adds new remedy selection criteria for ground water that include considerations of the timing of the achievement of the remedy goals, and of the urgency of need for the ground water. These additional criteria permit greater flexibility in selecting remedies that are "less aggressive" (and therefore less costly) in areas where there is little likelihood of near-term ground water use.

Third, the bill provides a separate test for determining whether treatment is the appropriate remedy in areas of the ground water plume that are low in concentration reletive to the restoration goal. In such areas, a finding of "unreasonable cost" is sufficient to move off the goal of restoration through treatment.

Fourth, the bill encourages the use of a phased approach to ground water remediation. Such an approach can be used to conduct limited actions (such as plume or source containment) that reduce risk from contaminated ground water and provide the additional site characterization information needed to make a sound final remedy decision.

Fifth, the bill clarifies the existing provision for Alternate Concentration Limits (renamed Alternate Concentration Levels or "ACLs"). This provision allows EPA to allow contaminated ground water to discharge to a surface water body, provided that certain conditions are met (e.g., no adverse impacts to the surface water, and no human exposure to the ground water). ACLs are useful in situations such as where a stable, low concentration plume flows into a nearby river, and there is no current or anticipated use of the contaminated ground water.

(B) The non-zero MCLG provisions of the bill are consistent with the Agency's current interpretation of existing law. The MCL Goals reflect a desired level of protection based on health effects only. For carcinogens the MCLGs are zero, as there is no known lower bound for the health effects of these compounds. As zero is generally technologically infeasible to attain, EPA recognizes that the appropriate cleanup goal in these instances should be the MCL. However, for those compounds (currently non-carcinogens) whose MCLG is non-zero, EPA believes the MCLG should be considered as a cleanup goal. In practical terms, however, there are very few non-zero MCLGs that currently are lower than the MCL (six of sixty-three). Furthermore, the reasonableness of the cost and the technical feasibility of achieving these levels must be evaluated prior to their selection as cleanup goals. In summary, the use of MCLGs as cleanup goals has not, and is not anticipated to become under the new Bill, a significant remedy selection issue for the Superfund program.

20. QUESTION: The hot spots definition in H. R. 3800 states that hot spots must pose a significant risk should exposure occur. Does the phrase "should exposure occur" mean that EPA will assume that containment remedies will necessarily fail and people will actually be eating the dirt or drinking the water?

ANSWER:

The proposed Superfund Reform Act calls for remedies that afford long-term reliability at reasonable costs. The bill does not reflect a belief that containment systems will necessarily fail. However, it does reflect the belief that the long-term reliability of a containment remedy is, to a significant degree, dependent upon the nature of the contaminated material contained. Thus, the bill targets the use of treatment technologies to reduce the intrinsic hazards posed by hot spots, the most highly contaminated material at a site, to enhance the reliability of subsequent containment.

The phrase "should exposure occur" refers to the fact that in order to be considered a hot spot, contaminated material must contain sufficient concentrations of chemicals such that they would pose a threat to humans should appropriate management controls fail. Generally, contaminated materials have been considered hot spots where they pose risks several orders of magnitude above health-based levels. Hot spots will not be defined as simple exceedances of such levels, but rather gross exceedances.

For the non-hot spot wastes, the legislation provides for consideration of containment and treatment on an equal footing. This is because our current experience with containment remedies, such as landfill caps and leachate controls, shows that they can be effective in preventing exposure to contaminants left in place when coupled with effective operation and maintenance and the appropriate institutional controls.

There are limited circumstances where containment of hot spots may be appropriate. For example, at sites with small hot spots in a large volume of waste or sites with very large hot spots HR 3800 allows final containment remedies. This reflects EPA's real world experience with landfills and mining sites where it is not practical to treat hot spots.

21. QUESTION: I also understand the proposed legislation requires that containment remedies be considered interim and that the President reevaluate the remedy when an appropriate treatment technology becomes available. Does this mean if a new treatment remedy occurs twenty years from now EPA has to break up the existing containment remedy and use treatment regardless of the costs? Is there enough flexibility to interpret and implement this provision reasonably?

ANSWER:

The interim containment provision of HR 3800 only pertains to hot spots where treatment technology is unavailable or only available at an unreasonable cost. It is EPA's experience that hot spots, those materials that are in high concentrations or are highly mobile, can be contained for a short period of time. Containment over the long-term is uncertain for these materials and is unproven.

HR 3800 does allow for final containment remedies for non-hot spot materials and in limited circumstances where containment of hot spot materials might be appropriate (i.e., landfills). We believe there is enough flexibility to interpret and implement this provision reasonably,.

If a new treatment remedy occurs twenty years from now EPA would not automatically break up an existing containment remedy and use treatment for hot spot materials. Under HR 3800 there would be a specific decision, once treatment technology becomes available, to select such a remedy. The criteria for this decision is the same as is outlined in HR 3800 for hot spots. Specifically, there would continue to be a consideration for unreasonableness of cost.

In addition, a decision of whether to select a new remedy based on available treatment technologies would include consideration of whether the materials being contained still constitute a hot spot. For hot spots there HR 3800 provides a preference for treatment, even though there would be some cost at which treatment is considered unreasonable and interim containment would remain in place.

However, during the period of interim containment some reduction in contaminants by natural means may have occurred. When a new technology becomes available, if the area is no longer a hot spot, containment would be considered equally with treatment on the basis of reasonableness of cost and other remedy selection criteria.

22. QUESTION: Everyone supports the concept of voluntary cleanups. The real question, though, is how serious are we about providing real incentives (such as funding and protections against future liability). How serious is the current Administration? What were some of the incentives considered but not included in H.R. 3800?

ANSWER:

Given the large number of sites needing cleanup and the limited resources of state and federal governments, EPA recognizes the need to leverage private sector resources by promoting safe and efficient voluntary cleanups. Title III of H.R. 3800 reflects EPA's commitment to facilitate and encourage such efforts.

Since states already have a great deal of experience with voluntary cleanups, and since these cleanups are most common at low or medium risk sites that fall under states' purview, EPA and states agree that the most efficient way to promote voluntary cleanups is through new and existing state programs. Title III provides both financial and technical assistance to states to develop and enhance their voluntary cleanup programs. It also provides several significant incentives for private parties to pursue voluntary cleanups, including the following:

- EPA would not propose for listing on the National Priorities List any facility where there is an ongoing voluntary cleanup under a state-approved cleanup plan;
- EPA would allow states to waive time-consuming permit requirements for voluntary cleanups under certain circumstances;
- Voluntary parties seeking cost recovery from other parties would be given a presumption that their cleanups were consistent with the detailed regulatory requirements of the National Contingency Plan; and
- States seeking federal funding or assistance would have to provide voluntary parties with some type of certification or "sign-off" indicating that the response is complete.

In developing these incentives for voluntary cleanups, EPA also considered but rejected certain other proposals. Most notable among these proposals was a suggestion to bind the United States when a state signed off on a private party voluntary cleanup. EPA and other Administration representatives rejected this proposal because EPA would have no oversight role at these cleanups, and would not have had a chance to review either the proposed cleanup plan or results of the cleanup action. The Administration maintains that it

should not be bound by an agreement to which it was not a party, particularly where public health and the environment are concerned.

23. QUESTION: Several have criticized HR 3800 for making promises but not having adequate resources to finance them. In light of that, why has the Agency ignored the signals sent by the Business Roundtable: They voted to support a doubling of the Environmental Income Tax "If necessary" to reform the liability system?

ANSWER:

The Business Roundtable supports the Superfund Reform Act, which retains retroactive liability. We recognize that we will need additional appropriations to implement the Act. The current revenue provisions in the bill are adequate to support required appropriations levels.

24(A).QUESTION: What is the total cost estimated to result from H./R. 3800's de micromis exemption and 10% cap on liability for generators and transporters of municipal solid waste? What amount of this estimate would be attributed to private waste disposal firms?

ANSWER:

H.R. 3800's de micromis exemption would give contribution protection and liability releases to de micromis parties (PRP's that have a very small volumetric share of the contributions) that settle with the government and categorically exempt de micromis municipal solid waste generators. Costs of cleanup would then be passed on to other PRP's. Since de micromis parties would no longer be participating in settlement discussions and potential litigation related to liability, this provision would reduce overall transaction costs to PRP's by \$8M and to insurers by \$6M.

H.R. 3800 also caps the liability of all generators and transporters of municipal solid waste (MSW), including municipalities, at an aggregate share of 10% of site cleanup costs. Based on available data, 25% of all NPL sites are assumed to contain MSW. The share of costs that would be allocated to all contributors of MSW at multi-party sites is assumed to be 25% in the absence of a cap. The average EPA settlement with MSW contributors at each site is assumed to be 7% of total cleanup costs. This provision would reduce overall transaction costs to PRP's by \$77M and to insurers by \$40M. The Fund is projected to cover the \$36 - 41M of the cleanup costs as part of the orphan share.

It is difficult to estimate the cost of the above provision attributable to private disposal firms because data is not available to assess this. In particular, we do not have data on the extent of commingling of residentially-generated MSW with commercially-generated MSW. To convey a sense of the potential order of magnitude of the cost attributable to private disposal firms, we do not have the following information: EPA's Office of Solid Waste estimates that residential sources generate 55 - 65% of MSW and commercial sources generate 35 - 45% of MSW. The National Waste Management Association estimates that private firms transport about half of residentially-generated MSW and 90% of commercially generated MSW. However, because of potential commingling of the wastes, it may be difficult to separate the commercial from the municipal waste or make liability distinctions based on the original source of the solid waste.

24(B) QUESTION: Why has sewage sludge been included in the exemptions and special provisions? To what extent is there a problem or need under current law to address sewage sludge and Superfund liability? How would the proposed exemption impact or relate to beneficial reuse of sewage sludge and the regulations in 40 CFR Part 503 issued under section 405(d) of the Clean Water Act?

ANSWER: Many co-disposal landfills on the National Priorities List contain municipal sewage sludge (MSS) that was disposed of as part of normal disposal practices. EPA, pursuant to its Interim Municipal Settlement Policy (December, 1989), generally does not pursue under CERCLA contributors of MSS or municipal solid waste (MSW) unless the Region has site-specific information that the MSW or MSS contains a hazardous substance that is derived from a commercial, institutional, or industrial process or activity. However, other responsible parties have brought contribution claims against municipalities and private generators and transporters of MSW and MSS. Such actions have caused or have the potential to cause substantial transaction costs and may impose a greater share of the remedy costs on MSW or MSS generators than what the Administration believes to be the parties' fair contribution to the cleanup.

The provisions proposed in the Superfund Reform Act of 1994 limit the liability of MSW and MSS contributors. In cases of clear inequities, such as small businesses and individual homeowners, the bill exempts such MSW and MSS contributors from Superfund liability altogether. While these provisions affect the potential liability of MSS contributors under CERCLA, they in no way affect the requirements for the use or disposal of sewage sludge under the Clean Water Act. EPA remains firm in its commitment to the beneficial use of sewage sludge and its enforcement of the regulations promulgated under 40 CFR 503 regarding the use and disposal of sewage sludge.

PREPARED STATEMENT OF WITNESS

STATEMENT OF
CAROL M. BROWNER
ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY,
BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES

JUNE 9, 1994

Introduction

Good Morning Mr. Chairman and members of the Subcommittee. It is a pleasure to appear before you this morning to present the Clinton Administration's reform proposal for the Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as CERCLA or Superfund. In February of this year, Chairman Mineta and Chairman Applegate, along with others, introduced H.R. 3800 on behalf of the Administration. The Environmental Protection Agency and numerous other departments and agencies worked very hard to bring this legislative proposal to reform Superfund to the Congress.

At the time of its introduction, I was particularly moved by the spirit of cooperation and determination shown within the Administration that enabled us to bring this legislative package to fruition. Since its introduction, H.R. 3800 has continued to benefit from communication and interaction with a broad range of groups interested in Superfund,

including industry, environmentalists, communities, environmental justice advocates, state and local governments, and the insurance industry. The untiring efforts of these groups, other Federal agencies, my staff, and Members and staff here on the Hill have produced a bill that represents a delicate balance of resolution and commitment to necessary reform. I believe it also demonstrates that support for this legislation is worthy of such towering endeavors. Because these reforms reflect a fragile consensus of many diverse interests, we must continue to proceed cautiously, or we will all lose the benefit of a much-improved Superfund program.

Recently, the Administration's bill received the full support from the other Committee of jurisdiction. We are here today to seek this Subcommittee's support as well. Superfund reauthorization will provide this country with a valuable opportunity to improve upon our successes and make changes to our shortcomings. However, as we all know, time is of the essence. Program authority for Superfund expires at the end of this fiscal year, and the failure to reauthorize the law could interrupt cleanups in progress, necessitate the termination of government contracts, impose additional administrative costs, preclude the start of new cleanups, and cause huge political repercussions in communities new, current, and prospective cleanup sites. Consequently, the Administration, and virtually all Superfund stakeholders agree that it is in our national interest to ensure that Superfund is reauthorized this year. I look forward to working with you to ensure that this bill is enacted into law.

Before discussing the provisions of the legislation, let me start out by briefly outlining the current state of the Superfund program.

The Current State of Superfund

Superfund was enacted in 1980 in response to public outcry over Love Canal in New York and the Valley of the Drums in Kentucky, which had become symbols of a widespread environmental problem that needed national attention. The uncontrolled dumping of hazardous wastes in some cases was posing serious risks to human health and safety and threatening valuable natural resources such as groundwater aquifers.

The original expectation was that the universe of sites needing cleanup would be only a few hundred, and the program would require relatively modest resources and would be paid for primarily by responsible parties (original budget: \$1.6 billion over five years).

Cleanup was to be paid for by the parties responsible for the contamination or, if they couldn't be found, by a trust fund generated through business taxes, particularly on the chemical and petroleum industries.

Since 1980, the expectations for Superfund have increased dramatically.

Approximately 1300 sites are on the National Priorities List for Superfund cleanup. It is estimated that a total of approximately 3,000 eventually will be a federal cleanup priority.

Approximately one of every four Americans lives within a few miles of an active Superfund site.

Superfund has had many successes during its 13 year tenure. To date, Superfund has completed construction of long-term cleanups at more than 237 contaminated sites, and another 1100 sites are in various stages of response. Additionally, in more than 3500 actions at 2700 different sites across the country, Superfund has led to the emergency removal of

hazardous substances that were posing immediate health and safety risks to neighboring communities.

Superfund was structured on the principle that polluters should pay for cleanup. As a result of Superfund enforcement actions, responsible private parties now are performing 70 percent of all cleanups, and they have committed \$8.3 billion to reduce threats to public health and the environment, clean up groundwater, and restore sites to productive use. In addition, through Superfund over 1600 public health assessments have been completed at hazardous waste sites, and significant advances have been made in basic and applied research related to hazardous substances. Superfund also has spurred advances in cleanup technology. In cooperation with industry and other Federal agencies, EPA has identified more than 150 innovative technologies now being used to treat contaminated soil, groundwater, sludge, and sediments.

Finally, Superfund has spurred and fostered development of state cleanup programs to the point where a recent state/EPA study reports the states have cleaned up over 2680 non-NPL sites since the mid-1980s under state authority and through state cleanup programs.

Despite these accomplishments, Superfund's weaknesses are recognized by virtually all stakeholders, and they threaten to undermine the efficacy of the statute. Criticisms of Superfund fall into six broad categories:

 Inconsistent and Inadequate Cleanups: The law currently does not specify a standard level of cleanup nationwide; instead, it establishes a complex cleanup framework under which applicable and relevant and appropriate state and federal standards are used to set cleanup levels. Consequently, cleanup goals, remedies, and costs differ site-by-site across the country. This inconsistency contributes to uncertainty, protracted site-by-site evaluation, debate over cleanup goals, and higher cleanup costs.

- 2. High Transaction Costs: Most of the private sector costs not directly associated with cleanup activities are considered "transaction costs." While transaction costs for the government have been relatively low, there is wide-spread agreement that Superfund cleanups generate high transaction costs in private party contribution litigation and in follow-up litigation between those parties and insurance carriers. These costs are particularly burdensome to small businesses.
- 3. Perceived Unfairness in the Liability Scheme: In addition to excessive transaction costs, the current liability regime is criticized as being unfair to many parties. Small businesses, municipalities, lenders, trustees and others argue that the burdens imposed by the liability system are particularly unfair to them. Larger businesses resent having to pay more than their "fair share" of costs.
- 4. Overlapping Federal/State Relationship: The federal government has primary responsibility for implementing the Superfund program, and it has exclusive

access to the money in the Superfund. States, however, play a significant role in the program's implementation. State standards apply to all cleanups, and states must pay a share of any Fund-financed remedial cleanup costs at non-federal facility sites. In addition, states have significant input in selecting cleanup remedies. Due to this overlapping authority and responsibility, federal and state governments often disagree over the degree to which sites should be cleaned up, the remedy to be used, and the allocation of costs. These disagreements contribute to the cost and duration of cleanups, and they result in substantial confusion among all stakeholders.

- 5. Inadequate Community Involvement: Many communities near Superfund sites, including low income, minority, and Native American communities, do not feel they are given an adequate opportunity to participate in the Superfund process. These and other communities believe the program does not address local circumstances adequately when evaluating risk or determining the method and level of cleanup. Consequently, communities may conclude that the resulting cleanup is overly conservative or insufficiently protective.
- 6. Impediments to Economic Redevelopment: Current law extends liability to both past and future owners of contaminated sites. As a result, the market value of older industrial sites can be depressed, because the specter of Superfund liability diminishes the attractiveness of investing in industrial areas.

Many claim that prospective owners who want to develop property have an economic incentive to use undeveloped, or "greenfield", sites to avoid potential Superfund liability, thereby contributing to suburban sprawl and exacerbating chronic unemployment often found in inner-city industrial areas.

A Vision of the New Superfund

The Clinton Administration is committed to new Superfund legislation that protects human health and the environment with greater efficiency and fairness than does the current law. To achieve this goal, the Administration has been guided by four objectives:

- -- to reduce the time and costs needed to clean up sites;
- -- to make the liability scheme fairer and more efficient;
- -- to increase the involvement of communities that live near sites in Superfund decisions; and
- -- to remove impediments to economic redevelopment of contaminated properties.

 These objectives are the fundamental building blocks for our reauthorization proposal and we believe that they also reflect the similar concerns Members of this Subcommittee have raised and reported previously.

H.R. 3800 will shorten the time required to conduct cleanups and will make cleanups less expensive in a variety of ways. To ensure protection, it establishes a process for setting national goals for all Superfund cleanups. The bill also provides for a National Risk Protocol for the conduct of risk assessments that will be used to determine the need for remedial action. The Protocol will include the development of standard formulae to be used

in setting concentration levels for the most common contaminants to speed up the cleanup process. The bill will reduce transaction costs and achieve greater fairness by instituting an allocation process and by having EPA fund an orphan share. Joint and several liability will be retained for those parties who do not accept their allocation. H.R. 3800 achieves greater fairness and reduces transaction costs:

- -- by exempting from liability certain parties who contribute only municipal solid waste, and truly tiny contributors of hazardous substances;
- -- by expediting settlements for "de minimis" parties (those whose contribution is small relative to total site contributions) and certain parties with a limited ability to pay for cleanup costs;
 - -- by providing settlers with greater finality; and,
- by capping the liability of generators and transporters of municipal solid
 waste, H.R. 3800 achieves greater fairness and reduces transaction costs.

The Environmental Insurance Resolution Fund, an idea developed by insurers and potentially responsible parties (PRPs), provides responsible parties with a mechanism for resolving coverage disputes with their insurers through the insurance resolution fund, and holds the potential for significantly reducing the number of disputes that end up in court, thereby reducing transaction costs.

The Superfund bill encourages beneficial reuse of contaminated properties by removing disincentives for property transfers and cleanups and by facilitating voluntary cleanups. It will lead to a more positive relationship between the federal government and the states, by expanding the ability of the states to assume responsibility for response actions,

including remedy selection, allocation and enforcement at NPL sites and to take pre-remedial actions at non-NPL sites. In addition, it will accomplish more cleanups by more effectively leveraging the combined resources of EPA, other federal agencies, states, local governments, and private parties.

H.R. 3800 addresses the concerns of disadvantaged communities by building environmental justice criteria into the process for evaluating sites to be placed on the National Priorities List. The Administration proposal provides a strong role for the local community in future land use determinations and remedy selection decisions, thereby making those communities more effective participants in the system.

I would like to address each of these issues in a little more detail, and then I would gladly respond to questions. The detailed priorities of the H.R. 3800 are as follows:

1. Speeding Cleanups, Cutting Costs.

The heart of Superfund reform has to be speeding the pace and lowering the cost of cleanup. Whether one talks to responsible parties, community groups, environmentalists, or other interested parties, all agree that the process for studying sites and evaluating and selecting remedies simply takes too long and costs too much today. Before we can improve this process, we must decide once and for all: how clean is clean?

The Administration's original proposal was premised on the principle that all communities are entitled to receive the same protection from potential health hazards associated with Superfund sites. The bill advances that effort by requiring national goals to be set for the protection of health and the environment and by establishing a national risk

protocol to be used in setting concentration levels. Formulae would be developed for the most common contaminants, and applied at sites, where appropriate, to avoid the need for a full risk assessment to develop cleanup levels at every site. The national goals and National Risk Protocol would be developed through negotiated rulemaking.

EPA also would develop a menu of generic remedies that could be used at certain types of sites without lengthy study. This menu of generic remedies has evolved out of EPA's thirteen years of experience running the Superfund program. At certain types of sites, we can be relatively certain of the type of remedy most effective for cleaning up the particular contaminants and media involved. We therefore can avoid "reinventing the wheel" and save time and money.

At the site-specific level, EPA would take the community's views on reasonably anticipated future land use into account in selecting remedies. A Community Working Group that is representative of the affected community would recommend to EPA a post-cleanup use for the site. In order to make the most efficient use of our limited resources, consultation with the community about future land use is essential. Where a property is located in an industrial area and the community determines that a factory should be sited on the property after cleanup, there is no reason to clean the site to residential levels. We must work with communities to design cleanups that meet their needs and their expected future uses for the sites.

Current requirements for cleanups to meet both "applicable" and "relevant and appropriate" requirements would be significantly modified. Applicable state and federal requirements regarding the conduct and operation of the remedial action would be complied

with. The National Risk Protocol, rather than the ARAR approach would be used to set cleanup levels; however, cleanup levels applicable under state remedial programs would be met by federal cleanups. Other state requirements could be made applicable, but only under certain circumstances and where the state demonstrates that such requirements are consistently applied under state cleanups.

The statutory preference for permanence and treatment would be eliminated and replaced by the concept of long-term reliability at a reasonable cost coupled with a preference for treatment of hot spots. Long-term reliability would provide EPA with an impetus to select durable remedies, but it would not restrict the Agency from considering other factors such as community acceptance of the remedy and the availability of other treatment technologies.

2. Reducing Transaction Costs and Increasing Fairness.

The Administration proposal represents a strong commitment to greatly reducing transaction costs. The proposal provides special accommodation for small businesses and contributors of small amounts of waste. It maintains the current level of PRP-managed cleanups. And it addresses the on-going litigation between insurers and policy holders with cleanup responsibilities. It achieves all these goals without introducing new litigation issues or expensive administrative adjudication procedures.

Residential property owners and lessees, and small businesses, among others, who generate or transport only municipal solid waste or sewage sludge would be exempt from liability. So too would generators and transporters of truly tiny amounts of hazardous

substances ("de micromis" parties), including many small businesses, be exempt from liability. Generators and transporters of small amounts of waste ("de minimis" parties), and parties unable to pay their full responsibility for Superfund cleanups, would be provided an early opportunity to settle their liability with a full release from the government and protection against suits by third parties. These provisions provide special considerations for small businesses which are financially unable to bear their full share of liability. In addition, generators and transporters of solely municipal solid waste which do not come within an exemption category would have the opportunity for early settlement with the government; the aggregate liability of these parties would be capped at 10 percent of costs at the site.

Owners and operators of municipal solid waste landfills with a limited ability to pay response costs would be able to settle early as well, and the amount of their payment would be subject to an ability-to-pay analysis crafted specifically to consider the unique characteristics of municipal governments.

At every privately-owned multi-party site where the EPA has selected a remedy after introduction of the Superfund Reform Act of 1994, an allocations process would be conducted by a neutral professional to develop a percentage share of responsibility for all allocation parties. Let me emphasize that the Administration proposal relies on private professionals to perform these allocations. The Administration does not want to see the allocations process turn into an overly bureaucratic, overly legalistic, "big government" lawyer-intensive solution. Specifically, we believe an informal process managed by experienced allocators is preferable to the establishment of a formal, legalistic system based on federal administrative law judges.

Potentialty responsible parties would be provided an opportunity to settle their liability to the United States based on the allocation and, if they pay a premium and meet other conditions, obtain full protection against future liability. Settlors who conduct response actions the value of which exceeds the aggregate of their allocated share and premium payment are eligible for reimbursement for the excess. To ensure that neither the allocation process, nor litigation against recalcitrants, will slow the pace of cleanup, EPA will retain authority to issue unilateral cleanup orders. Parties who satisfactorily perform cleanup under such an order and who meet other conditions will be eligible for reimbursement of most of the difference between their allocated share and the necessary costs of work they perform. To facilitate settlements, Superfund resources would be used to cover "orphan shares," which consist mainly of allocated shares attributable to liable parties that can be identified but are no longer in business or able to pay their share. The agreement of the government to devote substantial resources to orphan shares demonstrates this Administration's commitment to reducing litigation and increasing the fairness in this program.

In order to greatly reduce ongoing contribution litigation, the United States would take on the task of pursuing non-settling parties to require site response activities and recover expended funds. Such actions would be premised on joint and several liability for the non-settlers, and they could result in the recovery of some or all of the orphan share. The retention of joint and several liability is essential to the new liability scheme to ensure that responsible parties resolve their liability through the allocation and settlement process rather than through litigation. Again, the agreement of the government to take on the responsibility of pursuing non-settling parties represents a commitment to reducing transaction costs and

litigation for private parties. The government's pursuit of non-settlers provides settling parties with the certainty that they can settle with the government for their share and not concern themselves with going after other parties for contribution.

H.R. 3800 does not include a provision on abolishing retroactive liability. Abolition of retroactive liability would fundamentally transform the program from one in which 70% of response work is performed by PRPs, those who contributed to the contamination, into one in which 70% of the response work would be performed by the Trust Fund, through a public works program. Other problems would occur:

-proposals to abolish retroactive liability contemplate raising at least \$1.1 billion in new tax revenues sufficient to replace the 70% of response work performed by PRPs;

-cleanups performed by the Trust Fund would likely be significantly more expensive than those performed by private sector companies who are directly paying for the cleanup and who have an immediate incentive to control costs;

-elimination of retroactive liability would remove any incentive for voluntary cleanups for sites covered by the public fund. Tens of thousands of voluntary cleanups occur now. Without these voluntary cleanups, even contamination which has been discovered could remain or worsen while society waits for public cleanup funds; and

-changing Superfund to a taxpayer-financed cleanup program would create a huge public works program at a time when we are trying to scale back government programs and foster efficiencies.

A new Environmental Insurance Restoration Fund (EIRF) would be established with the objectives of ensuring settlement of insurance claims related to Superfund liability for pre-1986 disposal of waste. The litigation over these claims is currently a major source of litigation related to Superfund -- estimated to cost approximately \$300 million per year. The insurance industry has worked with the PRP community to develop a method of financing the

EIRF. As a result of these efforts, the EIRF would be financed by a fee on the insurance industry.

3. Expanding State Authority.

Among the reforms suggested in your report¹, and included in H.R. 3800 as a means of speeding up and increasing the number of Superfund cleanups, is a provision that would enhance the state role in Superfund and limit the overlap between the federal and state governments at specific sites. It provides the states with more authority and, therefore, with more autonomy. The state role provisions in the bill delegate remedy selection authority explicitly and give states access to the federal allocation scheme to ensure enhanced fairness at all Superfund sites. In addition, to provide settling parties with greater finality and eliminate dual sovereignty at sites, covenants not to sue will bind both the federal government and the State, so long as both entities have been given notice and an opportunity to object to the settlement. States will also have access to funding from the Superfund Trust Fund, subject to a fixed cost share of 15%, to carry out response actions.

4. Involving Communities.

H.R. 3800 reflects the principle that communities must be involved in the cleanup process from the time a site is discovered to the time it is finally cleaned up. Superfund, after all, is first and foremost a local program. The bill sets out several innovative

¹U.S., Congress, House, Committee on Public Works and Transportation, <u>Administration of the Federal Superfund Program</u>, H. Rept. 103-35, 103rd Cong., 1st sess., 1993.

mechanisms for getting communities involved in the cleanup process and for public meetings at significant stages of the process.

In addition, the bill authorizes the establishment of Community Working Groups, as advisory bodies, to provide direct, regular input by representatives of a variety of interested parties to State and federal agencies involved in the cleanup. These advisory groups would reflect the racial, ethnic, and economic makeup of the community, and they would include all community elements affected by the cleanup. The advice and preferences of these groups would be solicited at every stage of the cleanup process. The role of the community would be especially important in defining future uses of restored sites, which will be an important criterion for determining cleanup levels and technologies.

Federal funding would be available for the establishment of independent state Citizen Information and Access Offices (CIAOs) which will serve as information clearinghouses for all the sites, both NPL and non-NPL, in a state. The CIAOs will also assist EPA in nominating members to the Community Working Groups. I believe these offices will provide community groups with the information and assistance they need to be full players in the cleanup process.

The bill also addresses some of the same concerns this Subcommittee has had regarding Technical Assistance Grants. As amended, the Superfund Reform Act of 1994 also would greatly simplify the process for applying for technical assistance grants to ensure that this important source of funding is more widely available to community groups who need financial assistance. For the first time, technical assistance grants would be made available for sites that are not on the NPL.

5. Encouraging Economic Redevelopment.

H.R. 3800 is designed to reduce current Superfund-related obstacles to the redevelopment of contaminated sites. Economic redevelopment and community involvement are two of my personal priorities in this package. The flight of industry from urban brownfields to suburban and rural greenfields is often noted in the press these days. Inner cities lose jobs and industry, while previously virgin green space is converted to industrial uses or suburban sprawl. The Administration proposal addresses this issue head on. Currently, parties can be liable under Superfund if they own a piece of contaminated property, whether or not they owned the property when the contamination occurred or contributed to the contamination. This provision of the law has discouraged prospective purchasers from buying property that might be contaminated and banks from lending money for such purchases.

The bill would provide an exemption from Superfund liability for prospective purchasers of contaminated property, so long as they did not worsen the contamination at the site, agreed to either clean up the property or allow the government or responsible parties access to the site to clean it up, and meet certain other conditions. Lenders and trustees (such as bankruptcy and testamentary trustees) also would be given protection from liability under certain conditions to remove the current disincentive to making loans on potentially contaminated property.

6. Encouraging Advances in Science and Technology.

We agree with the comments in the Subcommittee report that EPA must address barriers that impede the development of innovative and alternative technologies. H.R. 3800 would improve the scientific basis for evaluating risks to public health and the environment posed by hazardous waste sites, and it would encourage the development, demonstration, and commercialization of innovative, efficient, and cost-effective cleanup technologies. Environmental technology development must be nurtured and encouraged if we are to make great strides in the coming years. Government must share some of the risk in this area. Under the Administration proposal, the government would share with private parties the risk of employing innovative technology to cleanup sites. Specifically, the Superfund trust fund would contribute a percentage of the costs of any additional remedial action required due to a failed innovative remedy, as opposed to placing that burden entirely on private parties.

Conclusion

In conclusion, the CERCLA reauthorization reforms embodied in H.R. 3800 stand as a unique representation of a cooperative and consensus-building undertaking. This undertaking has engaged the time and efforts of the Clinton Administration, the Congress and many of the Act's most direct stakeholders. Many predicted, more than once, that all was lost for Superfund reauthorization. We have persevered. Wide divergence of opinion and extensive policy debate was reported and, nevertheless, consensus on these reforms was reached.

The reforms in H.R. 3800 share a common goal of faster, fairer and better cleanups under Superfund while ensuring that protection of human health and the environment remain our paramount concern. These reforms are a genuine step forward to secure: increased state exercise of authority at facilities and greater community involvement at all stages of the cleanup process; the removal of barriers to economic development that currently exist in the statute; a neutral allocation process and faster resolution of a party's fair share liability in a single proceeding; expeditious settlement opportunities for certain parties; a streamlining of the remedy selection process and the promulgation of a single national goal for consistent cleanups; and the establishment of a new insurance settlement fund.

I cannot stress too strongly the Administration's level of commitment and the personal commitment that I share toward working with the Congress over the coming months to ensure that meaningful reform of Superfund is passed this year.

Mr. Chairman, thank you for this opportunity to address the Subcommittee. I will be pleased to answer any questions you may have.

H.R. 3800, THE SUPERFUND REFORM ACT OF 1994, AND ISSUES RELATED TO REAUTHOR-IZATION OF THE FEDERAL SUPERFUND PROGRAM

TUESDAY, JULY 12, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER RESOURCES AND
ENVIRONMENT,

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, Washington, DC.

The subcommittee met, pursuant to call, at 1:35 p.m., in Room 2167, Rayburn House Office Building, Hon. Douglas Applegate (chairman of the subcommittee) presiding.

Mr. APPLEGATE. If everybody would take their seats, we will con-

vene this meeting. Ah, the Minority is represented.

Welcome to the second of three hearings on H.R. 3800, the Superfund Reform Act of 1994, and the issues, of course, related to the cleanup of hazardous substances. Today's hearing concerns Superfund's liability system, groundwater issues, and the role of

the States in Superfund reform.

Liability under Superfund is strict, joint and several, and retroactive. Strict liability is liability without fault. Liability is established by showing that the person either owned the site or contributed to the hazardous substances at the site; EPA need not establish willful negligence. Joint and several liability means that all parties can be sued together or any one of the parties can be sued individually for 100 percent of cleanup costs. And in no case shall more than 100 percent of total cleanup costs be recovered. Retroactive liability means that persons can be held liable for cleanup costs even if the act leading to the contamination would not have resulted in responsibility for cleanup at the time it occurred.

Our first panel today will consist of persons interested in chang-

ing Superfund's liability system.

Our second panel will discuss groundwater remediation efforts under the current Superfund program and H.R. 3800. We look forward to hearing testimony concerning a recent study conducted by the National Research Council on groundwater remediation.

Our final panel will discuss the States' current role in Superfund

and changes to that role contained in H.R. 3800.

I want to thank each of the panelists for being here today. We are embarked on a very important environmental issue, one that we hope, with a great deal of cooperation, that we will be able to

conclude successfully before we end this session. It will take a mon-

umental effort to do so, but at least we are started.

So I thank all of those who have shown as much interest and we look forward to hearing the testimony, and at this moment we do not have our Ranking Member here, however, we do have two Members, and I would open up and ask if Mr. Hutchinson has a statement he would like to make.

Mr. HUTCHINSON. Yes, please. Mr. APPLEGATE. It is all yours.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Let me begin by saying thank you to you for once again providing us the opportunity to hold a hearing on Superfund reform legislation, and I congratulate you and thank you for that leadership.

I and a number of my colleagues certainly agree it is absolutely critical that this Congress put forth a fair and equitable reform measure as soon as possible. Over a decade and \$30 billion later, environmentalists, businesses, and concerned citizens alike are anxiously awaiting the conclusion of the most comprehensive clean-

up efforts in U.S. history.

According to one study of 1,275 listed Superfund sites, only 149 have been cleaned up at a cost of over \$7 billion from parties held responsible, and \$10 billion, \$10 billion, in litigation expenses. The cleanup of America's hazardous waste sites is long overdue, and it is time that the public receives an effective measure by which cleanup can begin and litigation would be reduced.

The inability of the Federal Government and subsequently potentially responsible parties to determine who will pay for the cleanup processes has resulted in a system which can be described as less

than adequate at best.

While the number of Superfund sites in the State of Arkansas, which I represent a portion of, is far less than some of the other States of my colleagues, waste sites in my region of the country have contributed to this significant environmental situation. One such instance in Fort Smith, the largest city in my district, involved a site which contained a variety of solid and liquid wastes.

In 1982, the EPA added this site to the National Priorities List and initiated a cleanup 2 years later. Once hailed as a success due to the cooperation of those involved and the subsequent rapid cleanup of the area, this story has anything but a happy ending. In 1984, the EPA ultimately identified 13 parties as being primarily responsible for the disposal of waste and then allowed these groups to pursue others that may have contributed to the dumping of materials. Inordinate amounts of litigation have now characterized this cleanup effort as a classic example of why certain provisions in Superfund need to be reformed.

So I look forward to hearing from our panelists today, particularly this first panel, and greatly anticipate working with my colleagues to complete an effective legislative measure. Thank you,

Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Hutchinson.

Chair Mineta.

The CHAIR. Thank you very much, Chairman Applegate.

Anyone working on the Hill in the 99th Congress remembers the contentious nature of that last Superfund reauthorization. But the

Congress in terms of this current Congress and the current

progress in process has been much more collegial in nature.

Beginning with EPA's National Advisory Council on Environmental Policy and Technology, and continuing with the National Commission on Superfund, large industry, small businesses, environmental groups, public interest groups, and others have put aside previous differences and met the issues of Superfund reauthorization with a new spirit of cooperation.

Despite the fiercely held and clearly incompatible positions held by the various interests, participants in the Superfund discussions each put aside preconceived notions of what a perfect Superfund bill would entail, and, instead, concentrated on areas of agreement

as to what it would take to get a workable program.

Although even the participants doubted in the beginning that agreement was possible, agreements were reached. Many of these agreements can be found in H.R. 3800, the Superfund Reform Act of 1994, the administration's legislative proposal which is currently pending before this committee.

It is a proposal which meets the key test of reducing transaction costs and delay while achieving more cleanup of toxic sites all over

the country.

The coalition which has come together in support of this compromise is truly remarkable, in that it includes so many diverse interests which have fought each other so hard over these Superfund issues. This coalition is not all inclusive, in that there are some interested parties which remain opposed to its product. But it is a coalition which is so broad that only a few months ago no one would have thought it possible.

We are not bound by their agreements in every detail, nor are we bound by H.R. 3800 in every detail. But we would be foolish to ignore the fact that without this remarkable coalition, we would return to the heavily armed standoff which has characterized this issue in recent years. Most importantly, the first casualty in that standoff would be any prospect of enacting a Superfund reform bill.

What that means for us is that changes we wish to consider must pass the test of not splitting the coalition. Voting for any amendment which splits the coalition is just another way to vote for continuing existing law, something we should all be very wary of.

In the end I do not believe that any of us would want to be responsible for the death of Superfund reform this year. The bottom line question is whether the Superfund reforms contained in H.R. 3800 represent an improvement over existing law. I think nearly everyone agrees that they are. To the extent we support H.R. 3800 or changes to it which the coalition can support, we have an excellent chance of reforming Superfund this year. To the extent we do otherwise, we have little chance of altering existing law, whatever our intentions may be.

In short, the task before us is difficult, but doable. We are pre-

sented here with an opportunity we should not let pass us by.

Mr. Chairman, I want to thank you and Mr. Boehlert for calling these hearings and for getting us under way on Superfund reform, and for the leadership the two of you have shown in this very important subject and arena. Thank you very much.

Mr. APPLEGATE. Thank you, Mr. Chairman.

Our distinguished Ranking Member, Mr. Boehlert.

Mr. BOEHLERT. Thank you, Mr. Chairman.

Superfund is broke and our goal is to move this subcommittee and the environmental statute in a way that makes it less onerous to those regulated and more effective in protecting the health of our citizens and environment. And I think we should be creative enough to be able to do that. These two goals are not incompatible and H.R. 3800 takes important steps to the realization of both.

With appropriate tuning, I am confident that we can get a Superfund reform package to the President's desk before the close of the 103rd Congress. If we fail, we ought to get spanked. I am personally committed to this effort and will be working with my colleagues on the dais and my friends in the audience to make

Superfund reform a reality this year.

Today, we will hear from three panelists that I believe will shed important light on issues at the core of meaningful Superfund reform: The extent of liability, the role of the States in site cleanups, and the standards and expectations that should dictate ground-

On the issue of Superfund liability, I am particularly interested in the implementation of the de micromis and de minimis provi-

sions and settlement conditions contained in H.R. 3800.

I represent some of the most often cited victims of the current Superfund program. At the Ludlow Superfund site, constituents of mine were notified that they were to contribute thousands of dollars for remediation because pizza boxes from their restaurant were found in the Ludlow landfill. And now what is often cited as one of the more historic and bizarre events of this whole deal, an energetic constituent of mine, an attorney and a pretty bright and innovative guy, called together on the eve of Christmas several years ago about 800 people that he suggested were involved in contributing to the Ludlow landfill site. They all came with attorneys in arms. They had a great big theater, one of the grandest theaters still raining in New York State, and he stood up and said, you are all going to get a bill for \$3,000. These are de minimis contributors; you are all going to get a bill and you better talk it over with your lawyer. But let me tell you, I feel good, this is the Christmas season, I am in the spirit of things, so I will cut it in half as a Christmas bonus.

Wall Street Journal did a front page story: \$1500, take it or leave it now, right now, before you leave the room. So the people turned to their attorneys and said, what do I do? They said, well, you can pay me \$5,000 to fight it and win, or settle now for \$1,500. And they walked out just paying the \$1,500. Bizarre. That is the type

of situation we cannot allow to happen again in the future.

On the issue of groundwater remediation and protection, I am concerned that H.R. 3800 does not accurately reflect a new and growing body of knowledge on how to best address groundwater contamination. The cleanup of contaminated groundwater is one of the most expensive aspects of many Superfund site remediation actions. Our decisions on how to address this multibillion-dollar issue should reflect the best data available. Our Nation's hazardous waste sites can be cleaned up more effectively, more equitably and

less expensively. I believe today's hearings will assist us in realizing those worthy objectives.

Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Boehlert.

Mr. Horn.

Mr. HORN. Thank you, very much, Mr. Chairman.

Few laws have raised expectations to the level that the original Superfund law raised those expectations. Few laws have dashed the hopes as much as the Superfund law has dashed the hopes of the average citizen to provide cleaner areas in which they could live, work and play. What we need to do is get the picking and the shoveling out of the courts and into the grounds and that certainly will be my aim in such hearings.

The environmental cleanup is a growth industry, without question. But the need is for real jobs working at the cleanup, not just talking about who might have done something 20, 30, 40, 50 years

ago when that is very difficult to ascertain in any fair way.

So I commend the Chair and the Ranking Member for holding these hearings, and I hope we can at last make a little progress and not just talk this issue to death so we are all sitting here a decade from now wondering why nothing has been done.

Mr. APPLEGATE. Thank you, Mr. Horn. Mr. Clinger.

Mr. CLINGER. No statement, Mr. Chairman.

[The prepared statements Mr. Tucker, Ms. Brown, and Ms. Johnson follow:]

Opening Statement
for
Water Resources Subcommittee
on
SuperFund Reauthorization
at
1:30 pm in 2167 Rayburn H.O.B.
by
Congressman Walter R. Tucker, III

MR. CHAIRMAN I WOULD LIKE TO COMMEND YOU FOR YOUR WORK IN THIS COMMITTEE AND IN THIS SUBCOMMITTEE AS CHAIRMAN. THE REAUTHORIZATION OF SUPERFUND PROGRAM IS THE AN IMPORTANT TASK THAT FACES THIS SUBCOMMITTEE CONGRESS. AND SUPERFUND HAS COST US BILLIONS OF DOLLARS WITH UNSATISFACTORY RESULTS AND WILL CONTINUE TO COST US IF WE DON'T ACT NOW. FOR TOO MANY YEARS WASTE SITE CLEAN UP HAS TAKEN TOO LONG, THE LAWYERS HAVE GOTTEN RICH AND MANY SITES HAVE GONE WITHOUT CLEAN-UP, WE NEED TO CHANGE THE WAY THE PROGRAM IS BEING ADMINISTERED. I HOPE IN THIS HEARING AND THE NEXT ONE ON THURSDAY, WE WILL HAVE THE CHANCE TO IDENTIFY THE PROBLEMS AND FIND A WAY TO FIX THE SUPERFUND SYSTEM.

EVERY STATE AND EACH DISTRICT HAS
AN UNIQUE STORY REGARDING A
SUPERFUND SITE OR SITE THAT HAS NOT
BEEN IDENTIFIED ON THE SUPERFUND LIST
BUT SHOULD BE. WELL, I HOPE THIS

SUBCOMMITTEE CAN ADDRESS AND FIND A SOLUTION TO THE THIS PROBLEM. IN MY DISTRICT I SHARE A SUPERFUND SITE WITH REP. HARMAN, IN THE TORRANCE AREA. I HOPE WITH THE PASSAGE OF THIS REFORM BILL THIS COMMITTEE WILL MAKE IT EASIER AND LESS COSTLY TO CLEAN THE SITES THAT NEED TO BE CLEANED.

I THANK THE CHAIRMAN FOR CONDUCTING THESE IMPORTANT HEARINGS, AND I THANK THE WITNESSES FOR COMING BEFORE THIS COMMITTEE TO TESTIFY AND HELP THE SUBCOMMITTEE IN REFORMING SUPERFUND.



Congress of the United States Louise of Representatives Washington, DC 20313

CORRINE BROWN 3D DISTRICT, FLORIDA

Statement of Congresswoman Corrine Brown Subcommittee on Water Resources & Environment July 12, 1994 MASHINGTON OFFICE

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Mr. Chairman, I would like to thank you for holding this hearing today and I would like to welcome our panel. I am very concerned about the impact of toxic wastes, and the rippling effects uncontrolled toxic waste sites have on minority and low-income communities. Superfund has been an emotional and controversial program since its inception in 1980. Although unintended, the program has spawned an irrational number of lawsuits and related transaction costs for countless small and large businesses, cities and non-profits, while failing to accomplish its primary mission of cleaning up cites to protect human health and the environment. This is true despite repeated efforts to improve the program within the current financing and clean up framework. I believe that we need to address Superfund reform in a manner that will speed up-clean ups and eliminate the public health risks that have not been addressed during the fourteen year history of the present Superfund program.

Superfund cannot be fixed with just a nip here and a tuck there. For those of us who represent what's been called toxic ground zero (the communities and people living with Superfund risk every day), we must bring about a Superfund

PENTEC , NEW WILLO PAPE

reform that will clean up our neighborhoods. We need to do it fast and do it right. We have to leave the lawyers and allocation committees here in Washington; we can't wait any longer to send out the clean-up crews and public health professionals to our local communities - neighborhoods have lived in fear of toxic wastes long enough.

The most serious flaws I find with H.R. 3800 are its (1) failure to priorities clean up work based on public health risks, and (2) failure to fully fund the programs it calls for because it maintains the old system of PRPs dodging and dancing around their legal liability for past actions. Ending the broken system of retroactive liability would allow us to implement a new funding program (increasing the EIT) to raise the dollars needed to move toxic dirt out of our communities. We do not need the old battles over who will pay to continue, we need a new focus on public health. We need fertile soil for our communities to develop and grow.

I believe that improvements can be made and I look forward to hearing your testimony.

STATEMENT OF REP. NANCY L. JOHNSON PUBLIC WORKS AND TRANSPORTATION COMMITTEE JULY 14, 1994

Mr. Chairman and esteemed colleagues of the Public Works and Transportation Committee, I appreciate this opportunity to share with you my thoughts on municipal Superfund reform.

Recently, Reps. Barney Frank and Sam Gejdenson joined me in introducing H.R. 4382, a bill to amend the Superfund law by removing all municipal landfills currently on the National Priorities List (NPL) and terminating all liability for potentially responsible parties (PRP). States would be responsible for submitting a cleanup plan for their municipal landfill sites to EPA and, if approved, EPA would reimburse states for the cost of cleanup.

There are currently 318 municipal sites on the NPL. Although I am pleased with much of the Superfund reform proposal introduced by the Administration, I am concerned that its municipal landfill provisions will bring relief only to those municipalities that generated or transported waste, not those that owned and operated dumps, which is those who took the tougher but more socially responsible route of creating and managing disposal sites. I also am concerned that the Administration's bill does not relieve all who contributed waste to a municipal co-disposal landfill from the burdensome costs associated with retroactive liability.

Unlike the majority of Superfund sites at which there are relatively few PRPs, municipal landfill sites often trap hundreds of individuals and small businesses in the PRP net. Worse, many retain

lawyers and enter into extensive litigation in an effort to avoid being stuck with an unfair portion of the cleanup costs. Many PRPs are small businesses in our communities, roofing or paint suppliers and small manufacturers who employ hard working folks. In Connecticut, many of these companies are already in tough straights due to defense downsizing and recession. The enormous litigation fees and EPA charges associated with Superfund designation could force many to close their doors. These businesses have been the strength of our tax base. Yet these are just the kinds of businesses that are getting badly hurt and whose survival is endangered by today's Superfund program.

But small businesses are not the only losers in this arcane system. As a result of what is deemed "unknown liability" tied to Superfund involvement, towns in my district and across the country are seeing their bond ratings downgraded by bond brokers. Therefore, these towns will have to pay more to fund new firehouses and schools and will ultimately pass those increased costs on to local homeowners in the form of higher property taxes. All this for a cleanup program that can't seem to get around to cleaning up!! We simply cannot afford to squander scarce government resources on this broken program.

Under our bill:

o all PRPs currently involved in municipal Superfund sites who disposed of waste in a lawful manner will be exempt from strict, joint, and several liability;

- o to qualify, states must develop and submit remediation proposals to EPA which must include the presumptive remedy provisions contained in the bill;
- o the presumptive remedy is a streamlined approach for municipal landfills which includes capping, trapping any harmful gasses and monitoring and treating groundwater. The President must also take additional action to protect public health. EPA has 180 days to review submitted applications and shall, upon disapproving an application, provide reasons for disapproval and allow for reapplication;
 - o EPA will designate \$5 billion from the Superfund for funding state remediations;
- o the remediation plan will promote future use considerations for the landfill area (e.g., use as park land, limited access industrial activity, etc.);
- EPA will reimburse states with approved programs for remediation costs, provided that action was not completed before January 1, 1994; and,
- o if remediation is ongoing but not completed by January 1, 1994, EPA will reimburse all PRPs for remediation costs only.

As the Public Works Committee tackles Superfund reauthorization, I ask that you consider my common sense bill and incorporate it into the committee's final product. Thank you for your consideration. Mr. APPLEGATE. All right. Well, now we will get to the panel and we will listen to the expertise which you will give to us. We have Mr. Larry Wallace of the Alliance for a Superfund Action Partnership; Mr. Spisak—got that right—Industrial Compliance; Michael McIntosh, ASAP; Chelsea Clock Company, Rick Leavitt; Local Governments for Superfund Reform, Mr. Findaro.

And I think we will take them in the order I called them, and

we will start with Mr. Wallace.

TESTIMONY OF W. LARRY WALLACE, EXECUTIVE DIRECTOR, ALLIANCE FOR A SUPERFUND ACTION PARTNERSHIP (ASAP), ACCOMPANIED BY JOHN SPISAK, CEO, INDUSTRIAL COMPLIANCE, INC., MICHAEL MCINTOSH, VICE CHAIR, ASAP, RICK LEAVITT, PRESIDENT AND OWNER, CHELSEA CLOCK COMPANY, INC.; JOSEPH T. FINDARO, WASHINGTON COUNSEL, LOCAL GOVERNMENTS FOR SUPERFUND REFORM

Mr. WALLACE. Thank you, Mr. Chairman.

My name is Larry Wallace and I serve currently as the Executive Director of a broad coalition called ASAP, or the Alliance for a Superfund Action Partnership. All of the members of this panel are members of the ASAP coalition, a coalition that also includes the National Association for the Advancement of Colored People, the American Furniture Manufacturers Association, the city of Atlanta, the Society of Independent Gasoline Marketers of America, the National Food Processors Association, The Grocery Manufacturers Association, Johnson Controls, the American International Group, Texaco, Phillips Petroleum, and many others in a wide variety of fields.

In my fully prepared testimony, there is a complete list of the membership attached, and I ask that that full testimony be submitted and accepted into the record, and we will give a briefer summary here for the committee purposes.

Mr. APPLEGATE. Your whole testimony will be made a part of the

record without objection.

Mr. WALLACE. Thank you.

As our chairman of the board for ASAP, Dr. Benjamin F. Chavis, Jr. and one of our other board members, Hazel Johnson, an environmental activist from Chicago; Carolyn Bell, another activist from Memphis, Tennessee, wanted to be with us today. However, during this week the NAACP is having its national convention in Chicago and it is dealing directly with some of these environmental issues at the convention and so they could not be present, but they asked me as executive director to join this panel and to share our feelings with the committee today.

Our group did not start out constrained by past ideology or commitments to old slogans and principles. To be sure, we did start out from very different perspectives but we shared a common purpose, to make the Superfund work. Unlike others, we did not merely ask what we thought would be politically expedient and we did not take any options off the table. We are here to tell you that the en-

tire Superfund debate has shifted in the past few weeks.

The earlier announced consensus surrounding the administration's bill appears to be nonexistent as evident by the 6 to 4 vote in the Senate Superfund Subcommittee. That consensus, if there ever was one, was among those who were invited to the table when the bill was crafted. Regrettably, we were not invited to be a part of that process and neither were most of the affected small businesses and other constituencies. We continue to be excluded from the ongoing negotiations on the bill.

Second, a change has occurred with the introduction of the Smith-Zeliff bill, which, similar to our coalition, came out after a year of discussions with Superfund stakeholders and experts in New Hampshire, not Washington. These are the people who have

seen the real Superfund, not its theories.

In many ways the Smith-Zeliff bill is responding to some of the practical imperatives which ASAP has recognized. Here are two Republicans, supported by others on the Public Works and Transportation Committee, who are not afraid to say that increasing business taxes to fund Superfund is a far more efficient way to protect public health than the law we have here today and, at the same

time, it could be better for business.

More and more members of the business community have come to a similar conclusion. Many businesses have added their voices to the ASAP's membership in expressing their willingness to accept the increased business taxes in exchange for eliminating retroactive liability. For example, in February of this year the Business Roundtable supported, quote, if necessary, an increase in the environmental income tax, up to a doubling of that tax, end quote, for retroactive liability reform. More recently, the U.S. Chamber of Commerce's Small Business Legislative Council endorsed the elimination of retroactive liability in return for a broad-based trust fund. We believe that this is not only politically feasible, it is the right thing to do for all Superfund stakeholders.

Liability and financing are the places to begin in changing the focus of Superfund so that it can truly address public health and community needs. Comprehensive Superfund reform must also address the other six points of the ASAP Eight Point Plan. That plan is also attached as an addendum. It covers such issues as a public health focus, community empowerment, different site selection and prioritization, minority participation, and community development. The ASAP representatives here today can speak in greater detail

about these components.

While the political landscape around Superfund reform has shifted, the committee is here today seriously considering legislation that will keep this failed system in place.

I see the red light has come on and so let me go into discussing

a few of the flaws that we see in H.R. 3800:

The bill calls for new programs but does not provide a way to pay for them. Less money under the bill will be available for cleanup. In some instances, money is merely shifted from one group, for

example insurers, to another group, certain PRPs.

The bill fails to focus or refocus Superfund on public health, which should be the program's highest priority. It builds on the Superfund's flawed foundation of retroactive site-specific liabilities.

It makes minor liability changes to certain parties while otherwise relying on an unfair, time-consuming and nonbinding cost allocation process which could only add to further delay, litigation, and inequity.

It fails to provide real relief for some of the most favored classes of small businesses that get caught up in Superfund liability.

It perpetuates a complicated, inflexible, top-down remedy selection system which is premised on mistrust and conflict due to the

current site-specific financing system.

This committee knows well that the Superfund has been a failure. You and others have documented the inadequate cleanup record, the staggering waste of public and private resources on legal battles and liability battles, the disenfranchisement of citizens, which erodes confidence in governmental levels, and the suppression of economic dreams as communities wait and wait and wait for action.

ASAP believes the administration and this committee want a successful Superfund program. This is the time, this year, to craft a bill that truly serves the interest of all Superfund stakeholders.

We are encouraged that you are holding this hearing. We welcome open, frank, and honest debate on all issues surrounding the Superfund program, and it is our sincere hope that the committee will take the time to examine our Eight Point Plan and other proposals which offer a positive alternative to the status quo embodied in the administration bill.

Thank you, and we look forward to working with you.

Mr. APPLEGATE. Thank you, Mr. Wallace.

Mr. Spisak.

Mr. SPISAK. Mr. Chairman, Members of the committee, my name is John Spisak. I am the President and CEO of Industrial Compliance, an environmental engineering and consulting business. We actually have to roll up our sleeves and clean up these sites and

operate under the existing law.

I am here today to talk about the core issue of Superfund and its problems and that is liability. First, we ought to commend Congress and the administration and others for recognizing that Superfund does not work and that it must be fixed. We need a new law and we need it now, not next year or the year after. However, we in ASAP are not willing to sacrifice good government and responsible citizenship that this administration repeatedly espouses for mere expediency. EPA is running amuck and they are running amuck because this is bad law.

Today, we litigate. We ignore public health priorities, and we do not clean up sites. We in ASAP can empathize with our perceived business and environmental opponents who support passage of H.R. 3800. They, as we, have lived the 14-year Superfund nightmare. We understand their desire to grasp at any change, even if it is small and flawed and seek special favors to reduce their own liability. We sympathize but we urge this Congress to exhibit principle and courage, as the cynics say are not here, and tackle liability and fix this bill once and for all.

The current bill merely reallocates the life preservers on the Titanic. Probably that is why there is some business support, but the

central flaw, liability, remains.

Why liability? Because it is the core of the problem. All of EPA's and Congress' extensive efforts in H.R. 3800 result from trying to repair the damage from the liability flaw, known as retroactive joint and several. H.R. 3800 is misdirected. It retains the old liabil-

ity scheme, the old disease, and merely reshuffles the funding

scheme, the source of litigation and delay.

The fact that EPA repeatedly argues that changing the liability scheme will shift costs from the private to the public sector admits that liability is used to raise money. H.R. 3800 continues to focus on who pays and not which sites nor how fast they are cleaned up. That was the original intent of Superfund and that failure is the major cause of public criticism.

ASAP removes the liability argument and it raises adequate funds fairly. Those funds come from the private sector, an EIT increase, small business taxes, funds from the insurers, but the delays and the litigation are banished. Sites can then be prioritized

on the basis of health, which is the original intent.

ASAP is often accused of raising taxes on business, yet the administration, through "The Earth," raises nearly \$8 billion of new taxes on the insurance industry. Where does it go? It goes to settle litigation, past and future, not to clean up. What have we fixed? How does this address the public concern of health priority and speed?

ASAP's new taxes all go to cleanup, and that is what is most important. H.R. 3800 admits the need for and thus details a complex transaction allocation process that will take time and money before sites are cleaned up. It shifts some of the warfare to the public sector. Money will be spent the same as now before a site is cleaned

up. All of this is required because liability has not changed.

As a hands-on professional who has to clean up the sites, H.R. 3800 will only have minimal effect on the saving of money and minimal effect on the amount of time it takes to prepare a site for cleanup. We will see continuous expenditure and an additional enormous technical resource that is poured into an allocation process before anything is done to turn a shovel. Only the venue will have changed and some groups will have received favorable treatment, shifting the burden to others.

EPA will still have no effective budget discipline and no effective mechanism to properly prioritize sites. Just let me touch briefly on

remedy.

With all of the emphasis, effort, and work that has gone into items like future use, economic and technical reasonableness, national standards and community input, all in H.R. 3800, where are the hammers or the mandates on EPA? EPA could do virtually all

of this today if they were so disposed.

Why have they failed? What is it that has renewed or changed in the emphasis in H.R. 3800 that will cause this agency which bills at rates higher than the public sector, which duplicates and triplicates oversight and essentially operates at no budget to change? There are certainly many good things in the remedy section of H.R. 3800, but without hammers and mandates, and without budget accountability, they will not happen. Please review the last 14 years.

With that, I thank you very much for the opportunity to testify, and I will be pleased to answer in detail or provide specifics, additional specifics during the question and answer period that follows.

Mr. APPLEGATE. Thank you very much, Mr. Spisak.

Mr. McIntosh.

Mr. McIntosh. Yes, sir, thank you, Mr. Chairman, Members of the committee.

My name is Michael McIntosh. I am here as a board member of ASAP. Amongst other activities, I have been the president of a foundation for over 20 years. Because I have been in the business of philanthropy with a special interest in environmental and civil rights issues, I serve or have served on the board of a number of national groups, including the National Audubon Society, Natural Resource Defense Council, Sierra Club Legal Defense Club, and Medgar Evers Fund. When I first began to focus on the issue of Superfund two-and-a-half to three years ago, my impression was that it was a \$250 billion problem. By the end of last year, I had concluded that the proper figure was probably much higher.

Recently, the National Research Council released a study which estimated the cleanup of groundwater contamination alone might cost hundreds of billions of dollars. By the time one adds this to the cost of toxic dump cleanup, plus the bill for natural resource damage and personal injury claims, the total may well be astronomical. We as a Nation are currently spending less than \$4 billion per year to address the problem. At this rate, cleanup could take 300 to 400 years, and even if we could afford to double our spending, which I don't believe we can, we would be dealing with a prob-

lem of 100 to 150 years.

It seems to me that these numbers are so large and the time frame so long that even for governments, they become meaningless. Certainly one of the missions of philanthropy is to be able to step back from the immediate fray and try to identify society's long-

term problems while also trying to develop solutions.

To that end, 2 years ago I have conceived and provided the initial funding to create the National Commission on Superfund. The idea was to bring the CEOs of a representative group of various stakeholders together in the hopes that they might hear and understand each other's problems and fashion a compromise to serve the broad-

est possible national and public interest.

As a commission member, I came away convinced that the country would be served best if, one, a system was created in which at least at multiparty sites the corporate community in return for release of their liability put up substantial additional funds for cleanup. Two, since there would no longer be a need for massive amounts of litigation, EPA could hire health experts and cleanup specialists rather than employing thousands of attorneys. Three, a hazardous cleanup system would be put in place that would operate on the general principle of cleaning up the worst first. And, four, the public health and community renewal would drive the process.

Unfortunately, I was incredibly naive. The commission was coopted by individual interests of some of its members and the result was not the basic reform that the country needs, but rather tinkering at the edges of current law while various commission members paired off to take care of and promote their own particular inter-

ests.

In my opinion, the environmental community, though well-intentioned, is not without its faults. They have developed a number of catchy sound bites like polluter pace and public works projects to fight basic reform. There are also some who want retribution, have

a desire to punish. I believe this is counterproductive.

The corporations are the major polluters, they are paying and to the best of my knowledge no one is suggesting that that be changed. Superfund is a public works project. When governments are involved, it cannot be anything else. But it is a public works project funded primarily by corporations.

Finally, the issue of punishment. Jonathan Kozal published a book several years ago called Salvaging Qualities. It is a book about the lack of education and educational opportunity, but it is also a book about toxic dump sites in minority communities. They

seem to go together.

His first chapter deals with east St. Louis. HUD describes east St. Louis as the most distressed small city in America, and the St. Louis Dispatch describes it as America's Soweto. In 14 years the current Superfund law has done nothing for these people, and I do not believe the current administration will do anything for them either. They have been consigned to the scrap heap of America's industrial age. They and other communities like theirs around the country are the ones that are being punished. That is the reason I support Dr. Chavis' efforts to make reforms of the current law more responsive to the minority communities' needs.

Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. McIntosh.

Mr. Leavitt.

Mr. LEAVITT. Leavitt.

Mr. APPLEGATE. Leavitt. You had an A in there.

Sorry.

Mr. LEAVITT. Thank you, Mr. Chairman and Members of the committee. I am delighted to be here. I will start my remarks by telling you something that perhaps you do not often hear from someone testifying before you, and I am here to ask you today to raise my taxes.

I am the president and owner of Chelsea Clock Company. I speak to you as an inner city small business member of ASAP concerned with the devastating economic impact Superfund retroactive liability is having on my business and thousands of small businesses

around the country just like mine.

I oppose the administration's Superfund bill because it does very little for small business and very little to resolve the economic paralysis created by retroactive liability. I urge you to consider the ASAP proposal to eliminate retroactive liability and incorporate our

proposals in reform legislation this year.

Let me be specific. Chelsea is a small business with a reputation for making the finest clocks in the world. Chelsea clocks are in the White House and are given by Presidents to other heads of state. They have been manufactured at the same facility in Chelsea, Massachusetts, since 1897, nearly 100 years. Thirty skilled crafts men and women produce America's finest clocks. And they all are in danger of losing their jobs because of Superfund's retroactive liability.

Recently, it was discovered that groundwater under our half acre site contains elements of an industrial cleaning solvent placed there over many years under previous owners, the last one of which is now a division of Allied Signal. The administration's bill does nothing to make Allied Signal responsible for cleanup of their pollution of what is now my property.

While Chelsea Clock is not yet an NPL site, I have attached an analysis to my testimony today of how we would be affected by both the ASAP Eight Point Plan, which we are proposing, and the

administration's bill if our site were so designated.

More immediately, however, I have an extremely pressing problem that is not addressed at all in the administration's bill. Upon reporting discovery of contamination to my bank, the bank's response was to demand full payment of our mortgage under threat

of liquidation of the business.

After spending \$60,000 for lawyers, both the banks' lawyers and mine, my bank agreed not to foreclose but increased my payments by nearly double. This has had an adverse impact on the business, as you can well imagine. Very recently, however, my bank was bought out by another bank, a local subsidiary of a foreign bank, and now that bank is demanding that I pay them off in full within six months or again threaten liquidation.

Allied Signal was encouraging support for the administration bill due to the great benefits in it for chemical companies. The banks have gotten to carve out from liability that they have wanted, but

what does the bill do for my small business?

Chelsea is but one of thousands of small businesses around the country confronted with unreasonable demands and threats from government, large PRPs, banks because of retroactive liability. There is nothing in the administration bill that will give us relief. And thousands more, and this is very important, thousands more small manufacturing businesses attempting to borrow in coming years to finance growth and employment, they will discover it impossible to do so.

Banks will not lend to businesses with Superfund liability or the prospect of Superfund liability because they fear correctly that with retroactive liability a business may face financial ruin. Now, who

would want to lend to a business that faces financial ruin?

Thus, unfortunate businesses like Chelsea unable to finance a costly cleanup will discover that they are also unable to finance growth and employment, and, like Chelsea, may confront bank liq-

uidation and loss of existing jobs.

If there is a better prescription for economic paralysis in the small business sector for this country, it would be hard for me to imagine. Paralysis is occurring mostly in the urban environment where many small manufacturing businesses are located. Citizens in those areas face loss of jobs and limited or nonexistent new job opportunities. At Chelsea, our growth and employment is stifled not only by the threat of bank liquidation but by the refusal of the traditional banking system to lend working capital to support growth and growing demand for our products.

Retroactive liability functions now in a small business sector as a punitive measure for past behavior. Whatever its original intent, retroactive liability has the practical effect of delaying cleanup and promoting economic paralysis. Solutions proposed in the administration's bill strike me as a tortured attempt, devised by the bureaucracy, to fix a badly flawed system. These solutions add more

complexity to the system and create an incentive for EPA and large PRPs to bring in more small businesses like myself into the system because of the new allocation and orphan share processes. If the administration's bill passes, I believe all of you can expect many

more phone calls from your small business constituents.

I hear you have been told small business supports the administration bill. That is wrong. Perhaps some trade associations here in this town do, but go outside Washington and talk to small businesses affected and they will tell you there is no such consensus, unless you replace the liability system. What you have in the administration's bill strikes me as government by the bureaucracy for the bureaucracy.

I ask again that you look at the monster the administration bill creates for small business and compare it with our efficient proposal to eliminate retroactive liability. EPA has had, this point has been made earlier, EPA has had the authority since 1986 to do for small business most of what is contained in the administration's bill but has failed to do so. Why do we think fresh authority will

cause EPA to act any differently now?

ASAP's proposal to eliminate retroactive liability and replace it with a large or broad-based business tax fund for cleanup will result in fast, cost-efficient cleanups and it will promote economic activity. Speaking as the small business representative of ASAP, we will gladly trade the certainty of a tax for the uncertainty of the retroactive liability system which causes so much economic paralysis and portends possible financial ruin for small businesses. Thank you.

Mr. APPLEGATE. Thank you very much, Mr. Leavitt.

And Mr. Findaro, I think what we will do is recess at this moment, because we have about six minutes, and so if you will bear with us while we go over and do what we are paid to do, we will get back here just as quickly as we can and reconvene and listen to your testimony and then we will have some questions.

We will recess at this moment for, say, 15 minutes.

[Brief Recess.]

Mr. APPLEGATE. Our next witness that we have, Mr. Findaro with the Local Governments for Superfund Reform. And we are

looking forward to hearing from you.

Mr. FINDARO. Thank you, Mr. Chairman. I am Joe Findaro, the Washington counsel for Local Governments for Superfund Reform, 74 local governments in 22 States, cities, towns, school districts and counties throughout the country headquartered in Hutchinson, Kansas.

About a year-and-a-half ago we were a group of seven managers and mayors of towns and cities that came together because we were very concerned about the course of the municipal issue, the way it was going and the deliberations on Superfund reauthorization.

LGSR is dedicated to comprehensive fundamental reform. Our municipalities believe that the conflict over liability must be eliminated and that a broadly based financing mechanism must be created so that our energies can be directed toward cleanup.

The administration's Superfund reform proposal is too narrowly tailored in scope to address the majority of stakeholders, including

municipalities. The fundamental flaw with the plan is its failure to guarantee every citizen who lives near a Superfund site a law that will clean up that site in an expeditious manner. Thirteen years of cleanup delays, inefficiencies and enormous transaction costs resulting from Superfund's retroactive strict joint and several liability system should be enough to convince everyone of the need for comprehensive reform.

The present site-by-site fund-raising system is at the heart of the Superfund mess, and any proposal that fails to address this key element will continue the blame game for people who obeyed the law at the time of their actions. This program is a stranglehold on local economies, which will continue if this bill is enacted in its current form. We are having problems in our local communities with bank lending, development loans, real estate values and general citizen anxiety.

The plan fails to help local governments fulfill our four primary responsibilities at Superfund sites—the first, eliminating the risk in a timely manner; second, protecting the local economy and the tax base; third, returning polluted nonproductive land to productive taxable status; and fourth, controlling our costs at those sites.

I would like to make a couple of comments about the liability cap

for generators and transporters in this bill.

I was going through my file, when I learned I was testifying this morning, and I came across a NACEPT briefing paper that EPA staff has put together; and when they talk about the cap on liability for transporters and generators of municipal solid waste, two advantages are mentioned in this paper which I want to highlight. One could result in industrial PRPs paying a greater share of the cleanup costs, and the second could increase the burden on municipal owners and operators. The only problem with this is that the coulds should be changed to woulds.

We believe that the municipal liability cap in the bill is a discriminatory treatment of municipalities. It is dividing the municipal community. Essentially, you would have a liability cap for both retroactive and prospective actions for generators and transporters—not just local governments but also for the private waste

transport industry.

You would be able to—if you were coming under that cap, you would be able to go to the orphan share or to the EIRF funding mechanisms even if you violated disposal law at the time, except

in cases of felony with respect to the EIRF.

On ability to pay, the owners and operators—municipal owners and operators would essentially be treated as private parties. It is nothing more than another unfunded Federal mandate which will ultimately lead to rationing of services and increased taxes on our

public to pay for an inefficient Federal program.

It would mean additional bureaucracy. Administrator Browner said at one of the hearings that the ability-to-pay provision would take this area out of the legal realm. As a lawyer, I would argue that this would create a whole new legal practice area for Superfund attorneys on working the ability-to-pay bureaucracy for owners and operators.

Strangely enough, we have municipal owners and operators being treated as private parties under the adminstration's bill and the private waste industry is being treated as municipalities. There seems to be a problem with the logic and the fairness behind these

provisions.

One example of the burdens that Superfund imposes on local governments is the City of Hastings, Nebraska. It is a community of 23,000 that has been involved as a PRP under Superfund since 1983. Hastings became liable when it opened and tested an old municipal water supply well, which it never used, and placed it on line. Although the well water tested clean, the city soon began receiving complaints about the water's odor. The well was immediately shut down and new samples were sent to the EPA for testing.

ing.

The results of those tests indicated that the water was contaminated with petroleum and other materials. Three other wells in the vicinity were shut down and new supply wells were constructed. EPA testing and subsequent investigation indicated that contamination came from no less than seven subsites whose pollution

"plumes" had commingled in the groundwater.

Cost estimates for cleanup at the seven sites ranged from \$20 to \$30 million for each site, far exceeding the city's 23,000 taxpayers' ability to pay. The city's annual budget is 26.5 million, approximately equal to the cost of cleanup at one site. Further, the city faces the potential of lawsuits being filed against it by other PRPs

under Superfund's liability system.

Unlike some municipalities, Hastings recognizes that it is the business sector that drives local capital investment in the tax base and employs the area's citizens. The city is careful about identifying local businesses as PRPs or sources of cost recovery actions although, with the present liability scheme, city leaders could reduce the municipality's financial liability, this action would only shift those costs, which could result in business relocations, employee layoffs, and loss of tax base, all of which would be detrimental to the quality of life in the community.

The issue my members feel most strongly about is retroactivity. Retroactive liability makes sense when applied to willful polluters who fail to operate in compliance with the applicable Federal, State and local waste disposal practices, but it makes less sense when applied to those who acted in good faith according to the applicable laws of the time; and it makes no sense at all when one considers that the ownership and operation of public waste disposal facilities and other infrastructure by local governments have always been distinctly public functions which they could not and cannot avoid.

Finally, I would like to point out that the so-called consensus on what Superfund reform should look like doesn't exist. LGSR is only one of numerous stakeholders that were excluded from the National Commission on Superfund, the NACEPT process and the ad-

ministration's own policy development process.

This bill doesn't represent a consensus among all stakeholders and shouldn't be accepted as one. If this bill is enacted, we will continue to deal with the tortuous process that will give future night-mares to municipal managers and other stakeholders throughout the country. We urge you to look at radical liability reform of this inefficient Federal program; otherwise, this program will continue

to pose more problems to municipal managers around the countries than the sites themselves.

Thank you.

Mr. APPLEGATE. Thank you very much, and to the members of the panel, try to keep questions to 5 minutes if we possibly can do that, and then if we need another go-around, then we will do that. Otherwise, we could be here for a long time.

And I think that we are interested in knowing, of course, what your positions are; and I think we have your full statements, and I think pretty much we know, with maybe the explanatory speci-

fications that we may need to get further from you.

Mr. Wallace, you had mentioned that your organization had not been a participant in the drafting of this legislation, but I think that is what we are doing now. We are in the process of trying to write it, and we have the vehicle; and we hopefully are going to be able to do what is right and incorporate some of the better ideas that will make it a more equitable bill. And that is why you are here now.

Mr. McIntosh made the comment that at the rate we are going it would take about 300 to 400 years to clean up all of these sites. Well, I sat here and did my own figuring and I think we completed about 30 or 40 sites—I am not sure—in 15 years; and I figure, well, if we really increased that and really went at it and got to 100 for 15 years, with 1,300 it would still take about 200 years, so you were about twice as high as you should have been. But I am not sure that at the rate we are going that we are going to be able to do that. You are right. And we are not seeing too much success. So it has been pretty much another failure. The idea is good, but

So it has been pretty much another failure. The idea is good, but I think we do need some changes. Your direction, of course, is take a look at some very large taxes, and I want to ask you a little bit about those. But also some changes in joint and several liability,

which I agree, too, I think needs some changes.

But the key component in your plan is the doubling of the taxes that are being collected. I would like to get a little bit of an explanation—a little better explanation of those taxes. And also I want to ask you where you are in negotiations with the Ways and Means Committee, and have you talked with the Chairman of the committee or anybody on the committee to see what kind of reception that you will receive from them, because they are the ones that are going to pass the taxes?

Mr. WALLACE. If I might respond to that question first, Mr. Chairman, and then others may have input that they would like

to provide

The specific financing option that we have come up with would be to leave the petroleum tax in place, which is about 550 million currently. We would leave the chemical tax in place, about 250 million a year currently. From the environmental income tax, we would just double the rate, which would create approximately a billion, 350 million, if you include an increase of 100 million within that for small business. So there will be a small business piece of 100 million, and the balance of the 1.25 billion would come from doubling the people who currently pay the tax. And that is the proposal we alluded to that had been approved as a policy by the Busi-

ness Roundtable that if there were retroactive liability reform, that

they would, if necessary, go up to a doubling of the EIT.

We have put in our proposal \$300 million level per year for the insurance industry, which is half a million dollars less than what is in the administration's bill. We would have a 10 percent State share and the Federal Government for those instances where it, itself, is a PRP, which—some estimates indicate that the Federal Government is the largest PRP in the country, and so that would create approximately a total of \$3.67 billion dollars a year for the program. And depending upon what happens to the proposal when it gets to Ways and Means, you could, under our proposal, go as high as 4.6 billion. So that answers that.

As far as contacts with the Ways and Means Committee, we are meeting with Members of that committee, and have met with a number of them over recent weeks; and the committee has been somewhat occupied with health care legislation, so they are now

shifting to other topics including this one.

Mr. APPLEGATE. Has anybody else talked with anybody on the

Ways and Means Committee? Nobody?

Mr. Wallace. What we should indicate to you on that is because we are this large coalition from each one of the sectors represented at the table today, when we meet with Congresspersons on this subject, we take different representatives, perhaps, but we did take an environmental professional, we took someone from the environmental community, from the civil rights community, someone from LGSR, the municipal community, and someone from both small and large business in every meeting.

Mr. APPLEGATE. I understand, too, in yours, you want retroactive liability abolished prior to 1987. Let me ask you why that date, and why is it such a good idea to just have it since 1987? And what happens to those who were the major contributors prior to 1987,

the major contaminators and known contaminators?

Mr. WALLACE. If I might start with an answer to that question, for 8 years of my life, I was an environmental lawyer at the Justice Department here in Washington and did some of these cases and actually worked on Love Canal, the first major publicized Superfund case. I was the State enforcement official for 2 years in North Carolina, and for the last 8 years have represented businesses, communities and others in these cases.

One of the major problems that I have seen from those different perspectives in which I have dealt with the subject of Superfund is that when you go back to the older sites, there is a very serious lack of information; in almost all cases, you are dealing with cir-

cumstances where the records were deficient.

One of the things that has happened by 1987 is that as our environmental law has evolved overall, the RCRA statute has been brought up to a stage in 1987 where all of the regulations are in place, the records are required to be kept, and you can intelligently look at the records after that date and determine with pretty specific accuracy as to who did what, how much they did, and have some idea of the nature of the toxicity of the material they have.

One of the things that causes so much delay in the current system is because you don't have that kind of proof and information; when you approach a small business or a large business about pay-

ing under the current system, they are more likely to call up their

lawyer and to fight and tussle over the allocation.

The other aspect of why 1987 as a date is the fact that if you look at the sites that we understand are in the current pipeline, that you could move approximately 80 percent of the litigation problems off of the litigation track and over to the cleanup track. So on one hand we are trying to use the information and law, as it exists, to better do a job. We are also trying to be efficient in terms of moving sites from the litigation side and over into the cleanup side.

Mr. SPISAK. I think it ought to be emphasized also, Mr. Chairman, that for those activities that were illegal or violated rules and regulations at the time, no matter when they took place, we are not proposing at all that they be eligible for reimbursement under this program. What was wrong was wrong, and it is always wrong and

it will stay that way.

Mr. APPLEGATE. Well, thank you. My time is up. And I may have some additional questions and would appreciate your cooperation in answering any questions that either myself or any of the Members of the panel send to you. I know that you will be glad to do that.

Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman. I want to thank the

panel for their testimony. Let me address this to Mr. Spisak.

It would seem to me that the final criteria upon which any Superfund reform legislation ought to be based is how much is it going to expedite the final cleanup of these various sites? So in your opinion, would H.R. 3800 expedite the final resolution of these cleanup of hazardous waste sites which seem like they drag on interminably? What is your estimation of that?

Mr. Spisak. Mr. Hutchinson, having worked in this business and continuing to work in this business, I don't see any material improvement in the expedition of cleanup. And if you look at the bill and really read it, you will understand that there is an allocation process that is supposed to reduce litigation. What we have to do

is go through that process.

PRPs are going to spend money. They are going to employ technical experts to try and determine who did what when, so that they get a favorable treatment in the allocation process. We are going to try to bring in as many PRPs and small businesses as possible to reduce their stake. Once the time is spent—and I think the time is codified in H.R. 3800, X number of months with the appropriate decision tree after that—that is just the first step. Now we have got an allocation that may or may not be accepted.

Now we go to war after that point over what is the remedy? What technology do we use? Why? Because that liability bogeyman is still out there. We still have to pay for something we probably didn't do, or we acquired through ownership, and the delays will continue. Those issues are not addressed, so we continue to plow through the same battlefield that we plowed through before, maybe in a different venue but it is the same thing over and over again:

If you eliminate liability, all of those issues are not raised. EPA has to follow a budget. There is adequate funding. There is no liability to apport in November 1988.

ability to apportion. You get on with the business of cleanup.

Mr. HUTCHINSON. Is there any likelihood that if there would be an unintended consequence, that it would exacerbate the process,

increase litigation and transactional costs?

Mr. Spisak. There is certainly that possibility. I think what could happen under H.R. 3800 is a move, because of the time constraint requirements for EPA to make allocation decisions quickly is that there will be a major effort to pull in as many PRPs as possible, so that there basically are more kernels to be discharged in the separating-wheat-from-the-chaff process. The more dominoes that have to be knocked down, the better chance you have of getting a smaller share of the allocation.

Today, with joint and several, you go after those you know and the ones with deep pockets. Under this scheme, there is every in-

centive to try and capture the world to reduce your stake.

Mr. HUTCHINSON. Mr. Wallace, I have heard the administration and various ones argue that if ASAP's proposals were implemented, the result would be a massive public works program to conduct the cleanups. What is your response to that? How do you

answer that?

Mr. WALLACE. Well, I think that claim is in the nature of a myth. What we have talked about in the proposal that we have is really redirecting the financing mechanism for the program. In the sites that are currently cleaned up by potentially responsible parties, almost in every site where there are many parties involved, you create a fund. In fact, there are new IRS regulations to change the deductibility of those types of funds that are set up by the PRPs. The money is collected and poured into that fund, and then someone is hired to actually do the cleanup. What we will be talking about doing under our proposal for a site that qualified and for PRPs that qualified, would be that the government fund would pour money into that pot as well.

The PRPs who didn't qualify for our exclusion from liability would pour into that and the site cleanup would still be managed by those large PRPs who could be identified from the business community, hopefully with business judgment and not the restrictions of government contracting and other things that could cause delays

in cleanup as well.

Mr. HUTCHINSON. You don't see EPA as actually doing the cleanup; that is a myth?

Mr. WALLACE. No, that is a myth. Mr. HUTCHINSON. The figure on this tax issue, I kept hearing the figure 3 to 4 billion in new taxes and if I was adding up correctly as the panel went through, we are talking about a lot of continuing taxes and then about between 1.2 and 1.8 billion in new taxes on the environmental income tax. Am I correct on that?

Mr. WALLACE. You are correct. The 3.6, and the \$4.6 billion level will be the size of the overall program, but the new taxes would

be in the 1.2 billion to the 1.8 billion level.

Mr. HUTCHINSON. My time is up. Thank you. Mr. APPLEGATE. Thank you, Mr. Hutchinson.

Chair Mineta.

The CHAIR. Thank you, Mr. Chairman.

Let me first ask, if I might, Mr. Leavitt, in terms of your testimony relative to the banks coming down on you in terms of foreclosure, I am wondering, do the provisions of H.R. 3800 having to do with the lender's liability provision protect you from the fore-

closure actions of the lending institution?

Mr. LEAVITT. I believe, Mr. Chairman, that under the present legislation, before it is changed by H.R. 3800, that threat to the banking system is always there, that they would not want to foreclose because they may assume the liability as owner of the property. But under H.R. 3800, the banking system will be—the bankers will be excluded from assuming liability. And how I view that is an open invitation to the banks to pursue foreclosure. What they want most of all is to be insulated from the possibility that one of their borrowers, such as myself, is handed a large bill for cleanup that would bankrupt me.

And so they really want to get away from what is—what is happening, banks are shying away from very fine companies like my own because they are afraid that either they would become liable for the cleanup if they take the property in foreclosure, or alternatively, the business will never be able to support the payments if a costly cleanup is imposed on the business. And so what is happening in the community is banks are shying away from not only lending to small businesses that have a potential for a cleanup li-

ability---

The CHAIR. I understand the portion on dealing with the lending, and you are saying that they are shying away, but I am wondering whether or not the provisions of H.R. 3800 wouldn't keep them from coming to you and saying, well, we are going to foreclose, that that heat would be taken off; that method of leveraging on you as that small business owner would be gone under H.R. 3800.

Mr. LEAVITT. I see it, Mr. Chairman, as an invitation for them to expedite the foreclosure process because they would be able to insulate themselves from any liability as owner of the property.

The CHAIR. Well, I thought of it really as the fact that the banks would be in a position to start flowing the money to small businesses because they won't have to be taking that kind of an action that you have indicated in order to protect their own situation.

Mr. LEAVITT. Well----

The CHAIR. Let me ask Mr. Findaro, you are, I believe, representing the local governments for Superfund relief, as I recall?

Mr. FINDARO. Superfund reform.

The CHAIR. Superfund reform. And I am just wondering, the groups like the National League of Cities, of which I was once a member of the board of directors, the National Association of Counties, the National Association of Towns and Townships and the U.S. Conference of Mayors are supporting H.R. 3800; and I was wondering, what is the difference that the LGSR takes as compared to the other municipal groups?

Mr. FINDARO. Well, I think the key point is LGSR is the only municipal group that is dedicated to comprehensive Superfund reform. These other groups have bought into what the American Communities for Cleanup Equity have been working on for a number of years, which is a municipal liability cap for generators and transporters, both municipal generators and transporters and private waste industry generators and transporters. We view that as a

carve-out. And we view it as a relief for a select group involved

with municipal solid waste.

We believe—I don't know if you were here when I gave my statement—that you do need to eliminate retroactive liability but you must have a broadly based financing mechanism so that we can stop or at least cut way back on the transaction costs and go to the cleanup of the sites in our communities.

In a nutshell, I think we support a comprehensive reform. You mentioned NACO, the Conference of Mayors, they bought into the limited relief the liability cap; and frankly, I think a lot of that is based on political viability, as least that is what some of them have said to me privately in terms of what can be done for municipali-

ties in Congress during this session.

There are some real hard decisions to be made with respect to all municipalities, both owners and operators, and generators and transporters; we do not like to see the municipal community divided, but that is what has happened through the cap proposal that is in the current bill.

The CHAIR. Thank you. Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Chairman.

Mr. Horn.

Mr. HORN. Thank you, Mr. Chairman. Mr. Wallace and Mr.

McIntosh might want to answer the following question.

As I look at your handbook, the various amendments that you propose to the hazard ranking system and the prioritization process, I note that you would require greater reliance on real risk and real exposure pathways. And while I applaud that goal, could you give us a little more detail, how your proposal would measure and prioritize risk? What would be the practical effect if you are reprioritizing the cleanup of those sites already on the national priority list, and would the sites be taken off and others be added and other cleanups be delayed? How much time at other sites?

Mr. WALLACE. Okay, first I will respond to the part dealing with

what our conceptual approach is about health.

What we believe happens now at Superfund sites is that usually the first parties to show up are investigators and lawyers; and they are showing up for the purpose to establish liability and to find out who is responsible and to investigate that part of the scheme.

What we would like to see happen is that the site selection process be changed such that the first parties that would come from the government to the site would be health professionals, and that what they would look at as health professionals in the ways that they can, determine what the real impact is on the citizens that either the site of the site o

ther live or work or otherwise are affected by that site.

Once they do that, then they would propose the sites to be cleaned up first, in terms of those that are the worst for the people living there. That is a real strong tenet of our proposal, to try to shift away from a deep-pocket motivation over into a motivation where public health and the real impact on the citizens of this country are considered in how we go through our decision-making process.

In terms of giving you more response to the second part of your question, in terms of what would happen to changes in the system

for sites that are already being worked on, I believe that is a question that the health professionals would have to look at; and if we are already working on the right sites, you could continue working on them. And you would have a prioritization in bands where some of the sites now that are a problem could continue to be worked on, but as you moved into the outyears, you would work on more sites that perhaps are not being worked on now because they are not necessarily on the list because of a real legitimate public health risk.

As I mentioned earlier, Carolyn Bell, who is our public health expert from Memphis, Tennessee, is attending the NAACP convention; and I will get further response to you from our Committee on

Health.

Mr. HORN. Fine.

Any other comments, Mr. McIntosh?

Mr. Spisak. Mr. Horn, if I might just add a little bit. If you would look at the Aspen, Colorado lead case, I think that is a good example of a situation where EPA has established a standard, tried to impose a formulated risk policy without taking into account health professional input in site-specific information. That is a site where they viewed the risk, and what they had hoped to achieve in cleaning up that site of 10 micrograms per deciliter in the blood; and yet health professionals who tested the majority of the community, children and adults, have discovered that the average lead content in that community is 3, far below the target that EPA was hoping to set by a cleanup. I think that is what happens when the health community and the professionals are not involved in the process, and I think it is also an indictment of how the current approach and policy at EPA leads one astray.

Mr. HORN. Mr. Chairman, I have two more questions, I don't

know if there is time for them or you wish to go down the line.

Mr. APPLEGATE. I will give you time for one and you can write

the other one in.

Mr. HORN. One potential argument against repealing the retroactive liability is the unfair impact on previous potentially responsible parties who have already paid under the Act's retroactive system.

How do you respond to the question of unfairness, and would these potentially responsible parties who paid in the past be credited in some way so as not to allow the nonpaying and the future potentially responsible parties a reward or an advantage over their competitors?

In other words, the people who have stepped up to the plate, they have paid. A lot of them dragged their feet; they would be covered. Would they have a competitive edge, and what do you propose

to do about it?

Mr. Spisak. Well, Mr. Horn, I think what we have seen through the government studies is that of the 13 or 1,500 sites on the Superfund list—I guess 13,000—only about 150 have been cleaned

up, to date.

When you look at the surplus list, the list of sites that could potentially go to the Superfund list, there are many thousands more. We are seeing that it hasn't worked and hardly the surface has been scratched. We understand that some have stepped up to the

plate under the old system, and certainly they may feel disadvan-

taged by this process. But it is a very, very small number.

If we look ahead at what we have to deal with—and as the Chairman rightly pointed out, this account takes many hundreds of millions of dollars, and decades to do—we have the vast majority of our work ahead of us, and we need to get on and make the correct fix. We apologize sincerely to the few who have stepped up in the past, but we are trying to right a major wrong for the future, and this is the only way we can do it.

Mr. HORN. Is there any other comment a panel member has on

that?

If not, thank you, Mr. Chairman.

I have one question for the record and that is: Have any States stepped forward with liability schemes that do not apply liability retroactively?

[The information follows:]

Minnesota is the only state with a liability scheme that does not apply liability retroactively. This plan applies a system similar to ASAP's in terms of efficiency, removal and transition costs for municipal co-disposal waste sites.

A report from a study sponsored by the State of New Jersey supports a program similar to the Minnesota program. Also, the ASAP-style approach has been endorsed by the New England Waste Management Officials Association.

SUPERFUND B U L L E T I N

MINNESOTA BECOMES FIRST STATE TO REMOVE LANDFILLS FROM SUPERFUND; NEW LANDFILL PROGRAM STARTED JUNE 1

"Now, my agency has a means of taking swift action to properly close and clean up ald identifies so that we can be confident that our ground water will be safe for future generations."

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MPCA Commissioner Chuck Williams Minnesota makes history in June 1994 by becoming the first state in the nation to create a clearup program aimed at old leaking municipal solid waste landfills. The new program removes such landfills sites from the state Superfund program, potentially ending several contentious legal actions underway at much sites as the Oak Grove Sanitary Landfill and Waste Disposal Engineering Landfill and promising to speed cleanup of old landfill sites statewide. The Minnesota Pollution Control Agency (MPCA) settinates that the program change will save \$400 million in legal and transaction costs at landfill Superfund sites.

Signed into law on May 10, 1994, the landfill bill creates a 10-year program to pidoritize sites, construct final landfill covers, and assume long-term llability for the sites. The program covers all sites that stopped succepting specified wastes before April 9, 1994. Under the new program, the MPCA will bring all accepting and complying landfill sites up to the latest closure standards, unless pending cleanup work must be completed first.

The push for a landful bill results from the recognition by Governor Arm H. Carlson, the Minnesota Chamber of Commerce, municipalities, and other stakeholders that the Superfund liability standard which works well at Industrial sites does not work for landfults. Landful sites cleanups have been deralled by protracted legal actions among responsible parties trying to assign

liability for municipal solid waste disposal. The new bill affirms that municipal solid waste sites are a public responsibility and should be financed as such.

Funding for the program will come from \$90 million in bonding to be issued over ten years, the current balance of the Metropolitan Landfill Condingency Action Trust Fund financial assurance funds, and an increased fee on commercial solid weste. The increase kicks in January 1, 1995, and will apply to solid waste from commercial sources, construction waste, industrial waste other than that going to a landfill owned by the same entity that generated the waste) and infectious or pathological waste. The fee is increased from 12 to 60 cents per cubic yard.

Before the state assumes responsibility for cleanup and postclosure care, the landfill owner and operator must complete certain tasks. The site must be closed to the standards in effect when the facility stopped accepting warts, and owners and operators must provide MPCA with insurance records and cooperate with the agency on access land-use issues.

Those sites already under MPCA or Environmental Protection Agency (EPA) cleanup orders will need a check-off from the enforcement agencies that remedies are working before the MPCA will accept the site into the program and discuss reimbursement.

MPCA may reimburse up to \$7 million per year, but no reimbursements will take place until October 1995. MPCA staff is working

Londfill program, conf. page 2



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Landfill program, from page 1

on the details. Those who want to be eligible for reimbursement later must suspend or drop legal actions that seek financial contributions from responsible parties toward payment of cleanup, closure and postclosure costs by June 15, 1994. Because this clause is important to those who believe they have reimbursable expenses at landfills, those who are in the process of seeking cost contribution – whether by lawatir or demand letters – should contact their stromery before this date to seek legal advice.

After the MPCA accepts the landful and issues a notice of compliance, the state will assume all remaining cleamup work and the cost of operation and maintenance. The agency will use a priority schedule to determine which landfults receive attention first under the cleamup program. The first draft of the landful priority list will be available January 1995.

How will the bill affect demolition disposal still underway at old landfills accepted into the new program? Landfills wanning participation in the program may accept demo waste until May 1, 1995, as long as their demo areas are more than 50 feet from the area filled with mbzed municipal solid waste.

The insurance industry, another strong stakeholder in Superfund, receives attention in the bill. The MPCA and the Minnesota Attomay General's Office may pursue claims against insurer that would otherwise have been litable under Superfund. However, the Attomay General cam't pursue these claims until 1997, giving the insurance industry the opportunity of working on a voluntary bay-out of its Superfund liabilities.

FATILITY CLEANUP FRUGKAM BASICS

Want the scoop on the new Landfill Cleanup Program?
Come to one of four meetings scheduled for the end of
June! These sill-day meetings will begin with an "executive
summary" session for those who can't attend the full day.
Pres parking is available at all locations, but participants
will be responsible for their own lunch arrangements.

Twin Cities Metro Area Thursday, June 23, 1994 Inver Hills Community College Fine Arts Building Theater 8445 College Trail Inver Grove Heighs 8:00 a.m. - 4:00 p.m.

Mankato Memday, June 27, 1994 Best Western Gerden Inn Hwy 169 North North Mankato 9:00 a.m.- 5:00 p.m. St. Cloud
Toesday, June 28, 1994
Steams County
Administration Center, #482
705 Coorthouse Square
9:00 a.m. - 5:00 p.m.

Grand Rapids Thursday, June 30, 1994 Best Western Rainbow Ian 1300 East Hwy. 169 9:00 a.m. • 5:00 p.m.

As MPCA staff continues to interpret the new law and develop procedures for the landfull program, more information will be made available to key players in the waste management arena. Four meetings have been scheduled in late June to discuss the basic framework for the program (see box, above). For more information, or an update on the landful cleanup program, contact Katherine Carlson, MPCA Public Information, 296-6605, toil-free 1-800-637-3468.







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CHSRG

Mr. APPLEGATE. Thank you very much, Mr. Horn, and if after we get everybody through here, we can go back and if you have something else you want to ask, we can do that.

Mr. Poshard.

Mr. Poshard. Thank you, Mr. Chairman. I would direct this to, maybe, Mr. Wallace.

I noticed in the extended testimony that you folks take issue with the bill's provisions on the orphan share fund, the \$300 million that is set aside from existing revenues. What is wrong with that? Isn't having the government pick up a share of the orphan

shares a positive for the potentially responsible parties?

Mr. WALLACE. Well, what I look at in that is where that share is today and where it will be after H.R. 3800; and the fact that that share is guaranteed in an appropriations way by the way they have written that, and when other priorities that I would put ahead of it—cleanup and dealing with minority communities and environmental justice and other priorities—are not guaranteed funding in that way.

And going back to my first point, what basically happens with the orphan share—since you are not going to increase, as I understand it, the size of the fund under the administration proposal—is that dollars that are now paid by private parties, when those private parties' liability would be cut off either by the 10 percent cap on municipal, public and private hold haulers of waste or you are cut out by the banks that are excluded, or cut off by some of the these other provisions in H.R. 3800, then basically you are shifting that cost from the private sector into the fund and the fund is the same size. Therefore, you reduce the amount of money that would be available for cleanup.

If I were drafting the legislation and if I were going to guarantee some things, I would guarantee that, for example, the agency for toxic substances and disease registry would do more than the 15 percent of the health assessments that are determined to be necessary today. And if I had a way of spending Federal dollars out of this pie, I would spend it in that way and other ways that will either protect health or clean up the sites, as opposed to shifting

the liabilities among the PRPs.

Mr. POSHARD. So under this procedure, we may have less funding for actual cleanup?

Mr. WALLACE. Yes, sir.

Mr. POSHARD. And we won't have any less warfare over finding the money among the PRPs that are left, whatever share is there,

in your judgment?

Mr. WALLACE. Well, I won't go over the same details that somebody else did earlier, but I think the warfare will actually be increased because you will have an administrative process to precede the litigation process that you have now. So you will have two forums in which dispute resolution is taking place.

One of the things that we are trying to do is get away from the dispute resolution business and get over to the cleanup business and therefore go ahead and raise the funds and try to address the

clean—up as opposed to dealing with liabilities.

Mr. Poshard. I apologize if my questions pertain to something that was already discussed. I came in late. Let me ask you one other guick guestion here. I know that we are on a time limit.

With respect to the retroactive liability and considering the ability of small businesses to pay, where EPA investigates, if they indeed find that the small business cannot pay or borrow the money to pay, they reduce—supposedly, they will be reducing the liability of that small business to the maximum.

Now, there is a debate going on right now between the administration and the small business community that supposedly negotiated this deal over burden of proof. Why is that important, as to where the burden of proof lies, either with the government or the small business person? I don't know who to ask that question to.

Mr. WALLACE. To me, it is very simple. And I will give a simple and short answer. Essentially, EPA has had most of the authority that is in H.R. 3800 for the last 14 years, or at least since 1986 when the Superfund was last reauthorized where a de minimis proposal was adopted and put in; and if they wanted to, through prosecutorial discretion or other administrative decisions, they could have left small business out earlier or the ones that it is unfavor-

able for.

I think the reason the NFIB people are debating this, when they passed the resolution, it is my understanding that they understood that the burden would be shifted from EPA-onto EPA and away from small business. And the way it came out in the bill, the burden of proof is on the business; and the discretion exists within EPA, so they see it as not really a significant change from the current law and, therefore, they could still continue to be trapped in this morass of litigation, even under the change in H.R. 3800. Then someone would have to actually prove they did something wrong.

Mr. Poshard. Would anyone else like to comment on that? Mr. LEAVITT. It is very likely under the ability-to-pay provisions

that what will happen is that the major intrusion of government into the life of a small business, because of the requirements to show the ability to pay, that literally bares your soul to the government. And that is something that small businesspeople are loathe

And second, the process would likely result in a negotiation where the small business would be burdened over a long period of time, because it has provisions for payments over time. We would essentially be borrowing money from the government to pay our obligation from cleanup. What our proposal suggests is to all of that by providing a fund to do that.

Mr. Poshard. Thank you. Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you Mr. Poshard.

Mr. Zeliff. Thank you. I would like to congratulate the panel on moving the debate on Superfund much stronger in the direction of real reform. I think it is very encouraging to see that happen.

If you could—I guess this should be directed to Mr. Wallace, if you had to do-in just two or three phrases, if you look at the current Superfund law and you had to say two things or three things that are wrong with that, what would they be?

Mr. WALLACE. Well, the first thing would be, the priorities are misplaced. The second thing is that there is too much legal warfare and not enough tension to public health. The third thing would be the unfairness to the communities that need the cleanup done and the unfairness to the businesses and the others that have to pay for it. So what in essence our proposal is about is redirecting those priorities and making sure that cleanup is occurring as opposed to the logjam that we have now.

Mr. ZELIFF. And if—in that unfairness, would you also include.

then, the unfairness of retroactivity?

Mr. WALLACE. Yes, that is what I was alluding to by saying the unfairness to some of the businesses, whether they are small or large, who get caught up into the system and perhaps should not be there. And I can give you lots of examples from my background

experiences with businesses that shouldn't be there.

Mr. ZELIFF. I know we have a task force up in New Hampshire, and we have worked on this for a few years, and the thing that I get to, when you turn to the retroactivity issue by itself, I just look at this, is this America? Is this really our system of justice? It seems so unfair and so wrong and so un-American, and I have trouble dealing with a Superfund reform package that doesn't address something that is so unfair, so unreasonable, so un-American. Any comment?

Mr. WALLACE. Well, I would agree with you that it is rare in American law for the kind of retroactive liability to be established in this form. In fact, the only other example I can personally think of is when the Clinton tax package was passed last July and made

retroactive to January.

Mr. ZELIFF. Let's hope that doesn't set a precedent for other

things to come.

If you had to come up with another major issue—and I don't want to put words in your mouth, but you asked me the question—I would say retroactivity and joint and several. When you look at joint and several—and you have a way of dealing with joint and several, I believe—can you just describe how you are handling that and the unfairness of that relative to proportional liability and joint and several?

Mr. Wallace. Well, I think a lot of the unfairness with regard to the joint and several aspect of it is historical in the sense that you don't have the information and data. I have been involved in sites where the investigation that was done to come up with PRPs was to simply take the county yellow pages and to list or write a 104 letter to everybody who was listed in that county in the time that the waste site was created because there might be a county

landfill.

So, the reason our proposal draws the line in 1987 is, we believe that you will have sufficient information on which to make those decisions and you won't have to take arbitrary information, surrogate testimony from drivers and haulers, who are perhaps in rest homes in some cases where we have done depositions, and that you will have, you know, federally required records to look at to determine the contributions. So in a context like that, the battle about allocation and responsibility to us makes a lot more sense. It doesn't make sense in cases like where you have a lack of informa-

tion and you are using surrogates to pull people in, and people are resisting because they feel they have been unfairly brought in.

Mr. ZELIFF. And again I don't want—the net effect of dealing with your bill as you propose it, I would assume that leads to greater efficiency and less cost? Is that the right assumption?

Mr. WALLACE. Well, I will let the cleanup specialist respond to

the cost of cleanup.

Mr. SPISAK. Certainly, Congressman, we spend an awful lot of our time taking samples and doing technical work to support litigation. If that goes away, we can go about the job of analyzing the site for cleanup and assessing the proper technical approach; and that is what we see as being greatly accelerated.

Mr. ZELIFF. Okay.

Mr. LEAVITT. In my State of Massachusetts, we adopted a no-fault automobile liability insurance plan years ago, and the result of it was a remarkable decline in the cost of settling automobile accidents, because you remove the litigious environment from that and the cost of that environment.

Mr. ZELIFF. Good.

If you had to do, and I guess this goes maybe back to you, Mr. Wallace, if you had to do a side-by-side comparison between your proposal and the administration bill, and I don't want to make this complicated, but just in a minute, how would you describe the major features of that comparison?

Mr. WALLACE. Well, we have prepared such a side-by-side pro-

posal and we will forward a copy to the committee.

[The information follows:]

ASAP vs. Administration Plan A COMPARISON OF SUPERFUND REFORM PROPOSALS

The following chart illustrates major benefits to PRPs under the Eight Point Plan advocated by the Alliance for a Superfund Action Partnership (ASAP). These benefits will not accrue under the Administration's proposed legislation.

ISSUE	ASAP	ADMIN			
Focus on public health	Yes	No			
More spending on cleanup	Yes	No			
Prioritize sites with greatest health risk	Yes	No			
Uses site specific cleanup standards	Yes	No			
Eliminates unlimited liability for old legal disposal	Yes	No			
Severely cuts transaction costs	Yes	No			
Provides broad-based financing	Yes	No			
Gives business certainty and predictability about contributions	Yes	No			
Treats all PRPs equally	Yes	No			
Provides budget for natural					
resource restoration	Yes	No			
Focus resources on heavily					
impacted communities	Yes	No			

ESTIMATES OF SUPERFUND NPL SPENDING: TODAY AND UNDER THE PROPOSAL

			FISCAL YEAR 1992 (in millions of dollars)	PROPOSED (in millions of dollars)
Cleanup		Orphan & multi-party sites	1600	2200- 2770
		Single-party sites	550	550
		Emergency removal	250	250
		Total	2400	3000- 3570
"Enforce	"Enforcement"		200	50
Other	Headquarters	Overhead & research	300	Redirect
	Natural resources	Natural resource restoration	under 100	Up
	Community programs	Public health	50	Up
		Public participation	5	Up
		Remediation training in affected communities	0.02	Up
		Coordination of other federal programs	0	New
		Total	450	570-1000
Total		3050	3620- 4620	

Mr. WALLACE. In terms of some of the highlighted summaries of that, our proposal makes fundamental changes and far-reaching changes in the liability system, in the taxing system, in promoting public health first, in having more consideration across the board for minority and people of color communities, and changing things in a way that the Superfund program can be a positive not only with regard to having the cleanup done, but making sure that the community is involved in the cleanup, making sure jobs are created as a result of the cleanup, making sure that businesses can flourish in the community and that the community and its municipality can afford the right kind of schools, roads, and other things that are financed locally on a local basis from their tax system.

Because under the current system, and we believe it will continue under the administration proposal, where you have a Superfund site and the businesses are forced out of business and they are no longer paying into the tax base, and the land lies vacant and is not cleaned up, and the community is still exposed and the school quality goes down, and other sins and ills crop up. So what we are looking for at the end of the day is a sustainable com-

munity in all respects.

Mr. ZELIFF. Mr. Chairman, does that red light mean we have had it?

Mr. APPLEGATE. You are done.

Mr. ZELIFF. With all due respect, thank you, sir.
Mr. APPLEGATE. Thank you, Mr. Zeliff.
[The statement of Mr. Zeliff follows:]

HON. BILL ZELIFF OPENING STATEMENT WATER RESOURCES SUBCOMMITTEE July 12, 1994

Mr. Chairman, thank you once again for continuing to hold these very important hearings on the Superfund program. As you know, I have a very strong interest in this program, and I look forward to the hearings this week.

I have been involved with Superfund since I was first elected in 1990. Soon after being elected, I learned that I had 14 National Priority List sites in my district -- and began walking those sites.

After walking just a few sites, it became clear to me that this program was not working. Small towns were putting off building new schools or hiring new teachers, and small businesses couldn't find the capital to expand and create jobs.

I then assembled a Task Force of about 35 members to study these problems, and come up with some suggestions as to how to get the Superfund program back on track. In fact, some members of that Task Force are scheduled to testify on Thursday.

We came up with a series of recommendations which I then turned into H.R. 4161, the "Comprehensive Superfund Improvement Act." I asked Senator Smith to help us over in the Senate, and here we are today.

While my bill gets into many different areas, the most important part of my bill addresses liability. Specifically, the elimination of retroactive liability and the replacement of joint and several with a binding fair share allocation system.

Retroactive liability permeates every aspect of the Superfund from driving cost recoveries and litigation to remedial and cleanup decisions. It is unfair, and it is un-American to hold people responsible for actions which were completely legal at the time.

I urge members to look at our proposal, and I urge them to listen to the testimony. Even more so, I urge them to go to Superfund sites in their districts and ask the people involved at those sites what should be done to fix Superfund. I can almost guarantee you will hear a different story than you hear most often here in Washington.

The bottom line is to get the money away from the lawyers and into cleaning up these sites. The only REAL way to do that is to eliminate retroactive liability.

The Administration's bill works along the edges of the problem without going the distance. The best example of this is their establishment of the Environmental Insurance Resolution Fund, or EIRF. This provision is an industry-wide referendum on a fund which raises money to solve transaction costs -- not clean up sites. The EIRF tries to solve a symptom, not the disease.

Finally, I would like to welcome our first panel -- members of the ASAP coalition. ASAP's Eight Point Plan and my bill share a very similar philosophical point of view, especially in the area of retroactive liability elimination. More importantly, we both want to see FUNDAMENTAL reform to Superfund, not just tinkering.

I will stop there, Mr. Chairman, in the interest of hearing today's testimony.

Thank you once again.

The CHAIR. Mr. Chairman. Mr. APPLEGATE, Chair Mineta.

The CHAIR. Mr. Chairman, if I might make one comment before we proceed. I am not a tax expert and this is not a tax hearing, but I don't believe the Clinton bill was the first one with retroactive tax provisions in there. There have been other provisions of tax law with retroactivity. So I just wanted to make that one point clear.

Mr. APPLEGATE. Well, I thank the Chairman for that. And we had discussed that and it is very true, and while nobody likes to pay retroactive taxes or any kind of taxes, most people are the first there to deduct their baby that was born on December 31 of the

year. So there is retroactivity on both parts.

Ms. Shepherd.

Ms. SHEPHERD. Thank you.

I would like to direct my questions to a concern that I have, and I have a number of Superfund sites in my district, and that is the incentive that seems implicit to me within your proposal for a business to say, well, I have paid my tax and it is really very expensive to be careful and to clean up this waste and to dispose of it appropriately, and the government will pay for it anyway, and so I have already paid and I will not bother to be careful and they will clean it up.

What is the incentive in your proposal for a company to take re-

sponsibility for the waste that they are producing?

Mr. Wallace. That is a very good question. It is embodied in point number seven of the Eight Point Plan. Our plan, even different than the administration's plan, is the only plan that leaves the current liability system in place going forward. The incentive for what business conduct is going to be now and in the future is based on what the law will be now and in the future, and, therefore, we leave the current system, where you would have strict joint and several liability going forward and so every business would have a great incentive to do that.

The problem we have with a part of the administration pro-

posal——

Ms. Shepherd. Let me just stop you. So you are saying that in your proposal you have strict joint and several liability going forward but you just do not have it retroactively?

Mr. WALLACE. Yes.

Ms. SHEPHERD. Go ahead. I didn't mean to-

Mr. WALLACE. The problem we have with the administration proposal is in their way of trying to, I believe create more fairness for the industries and businesses, they make the changes that they would make to the fair allocation program both retroactively and prospectively. So we argue that we have the greatest incentives that will control behavior in the future.

Ms. Shepherd. When you do this, do you have any de minimis standard that lets people who have inadvertently and in small amounts contributed to the Superfund site or do you chase every-

body?

Mr. WALLACE. It would tend to work to the advantage of those that were de minimis, because going forward, again, they would have the records which they are required going forward to keep by

EPA and to maintain those records for 50 years, and so in the future if a party were actually de minimis, 1.5 percent or less of the waste, then they would not have to argue, as they have to strenuously now under the current system, about an old site, but they could actually demonstrate proof that in a clearer fashion, and the larger parties would also be clearly identified and so the share of the responsibility would tend, I believe, to go to the larger parties. And then if you allowed the current law to stay in place, as I indicated, when Congress reauthorized the act in 1986, they put in a discretionary de minimis provision where if EPA felt it was unfair for a de minimis party they could work a cash out or some other kind of settlement to get them out of the site.

Ms. SHEPHERD. Now, in my district I have a mining company that has voluntarily been cleaning up and has spent many, many, many, many millions of dollars doing that. They have never been listed as a Superfund site. In fact, I have several of these. And they could not be counted in your statistics of how many Superfund sites there are and how many have been cleaned up because they have never been listed. Nevertheless, it is precisely the fear of being listed that has encouraged them to voluntarily clean up, and they have put far more money into it, far more rapidly and with a great deal of efficiency and under the oversight of the EPA than I think

Superfund could do if it took it over itself.

I think H.R. 3800 tends to encourage that. How does your bill en-

courage that?

Mr. WALLACE. Well, first of all, in a situation like the one you describe, those types of parties would be excluded from the government-financed program. If it was a single party, then, again, the same liability scheme that is in place under current law would remain. So the incentives that existed for the last 14 years for your single party company in the community to go forward and clean up would still be there.

Ms. Shepherd. But if there were several parties involved, then

you are back to the joint and several problem?

Mr. WALLACE. Well, there would be one incentive in our system, because what would happen is if you had, say, a small number of parties, like five, those five parties could come together voluntarily, agree to manage the cleanup, apply to the Federal fund for funding, or go ahead and do the cleanup and get reimbursed.

There is an incentive to do that, one, so that they can hold down what the cost of the overall expenditure would be; and, two, there is an incentive for them to do so because if they do not do so now, the problem is likely to spread over time and they would have a higher bill under the future law if there was any continuing oper-

ation on that property.

Ms. SHEPHERD. You know, if we simply let everybody who polluted before 1987 sort of be free of any responsibility for that, and we tax all of the companies in the present to pay for that in the past, it strikes me as a rather unfair shifting of burden. Is that not what you are suggesting that we would take the oil and gas tax and this list of taxes, the doubling of the environmental tax, you would not then—and then the Superfund sites would be cleaned up from that tax pool of money and the going concerns that were still

liable for it would not, therefore, be sued or held responsible? Have I got that right?

Mr. WALLACE. No. Ms. Shepherd. No.

Mr. WALLACE. I would consider, with all due respect to the Congresswoman, that what you described in your question would be a mischaracterization of our position. I believe you indicated that what we would do is draw a bright line along 1986 and let everybody off the hook before that. I think that is not the intention or

the details of what our proposal would be intended to do.

What we did was to look at those types of sites where you have large numbers of parties, where you have limited information, and to try to quantify those, looking back, to allow in some instances of the multiparty, where disposal was legal at the time as it was done, and where those parties would be willing to come together and to oversee the cleanup and then be overseen by EPA to go for-

ward with a cleanup activity.

There would be large numbers of sites, I believe, that would still exist that were pre-1986 sites. I believe there would be some sites where illegalities took place which would still be under the current law. So I see it as a more narrowly crafted exception for situations where since the cleanup is not now occurring and exposure is still occurring to the community that we would just avoid that battle, raise the money another way, and go ahead and deal with that historic backlog of sites.

I don't know—the cleanup specialist, Mr. Spisak, might have a

comment.

Ms. Shepherd. But let's say there is an existing company that did participate in polluting the site and they did that in 1964 through 1975 or something. Then they no longer have any responsibility for cleaning up that site; is that correct? We would clean

it up out of this tax pool?

Mr. LEAVITT. In 1964 to 1975, the contamination that the company contributed to the dump site was not an illegal act and what we all object to here is being held responsible retroactively, not just by a few months in a tax when a new tax is enacted, but by many, many years being held responsible retroactively for actions that were at the time legal. And this is what has caused the delay in getting these sites cleaned up, and this is what poses the public health hazard that we speak of. If the site is not cleaned up, continues to be a toxic site, then the public is exposed to that hazard.

What our proposal is is to not let companies off the hook for doing something illegal. Anyone that has done anything illegal at any time must pay the penalty for that. What we are proposing is to shift the funding from a retroactive punitive nature to a very broad based, much like the highway trust fund. We all ride on the highways when we pay our nickels and dimes at the pump. This

proposal is similar to that.

Mr. SPISAK. Ma'am, I think what you have described is the existing system. That, in fact, you have many companies who are long since out of business who polluted, who have merged over the years, who did their disposal either under the direction of some governments agencies, as is the case in DOE, the old Atomic Energy Commission and DOE contractors who did the technically accepted practice at the time, who are now, today, being asked to pay for something that was perfectly correct and legitimate at the time it was done. And what we are saying is let us quit trying to lay the blame and punish people for something that was correct at the time, let us put together a broad-based fund and let us get these sites cleaned up.

We let no one off the hook. If the company is still in existence today and it polluted back in the 1960s, it will pay its taxes today and it will have to participate in the cleanup. It may be selected as the company to lead the cleanup over the next 3 years and then slowly get reimbursed by the government. In any case, it certainly

will participate.

Those that did things illegally, those that hauled the drums out into the bayou in the middle of the night, they get no relief. They continue to be punished.

Ms. SHEPHERD. Thank you, Mr. Chairman. My time is up.

Mr. APPLEGATE. Mr. Ewing.

Mr. EWING. Thank you, Mr. Chairman. I want to go into this just a little more because it certainly hits probably every one of us in this body, and this committee came up with these tough decisions.

But when you talk about somebody who did something that was not illegal, we go back with cleanup responsibility many, many years, a number of decades, when maybe there were no rules. What about just the careless handling of waste in the 1930s, or before, and those companies may or may not still be in existence? Are we going to say that because it was not illegal is something that that company should not have to clean up?

Mr. WALLACE. You are depositing an example with a company in the 1930s that is still around that did something proper or im-

proper at that time?

Mr. EWING. I am not sure there were any rules, there were many rules governing it. You took it out to the dump site and left it there. What about those? They were not violating known rules, but it may have been careless by today's standards or improper by today's standards.

Mr. WALLACE. Then that would be a site that would be one that would be a potential for cleanup by participating in the type of

fund we are talking about.

Mr. EWING. We are never going to settle this decision here today, but just on my recent break at home, I met a constituent and this company has property that they have acquired for some years and it was at a social function and we really did not sit down and go into detail, but according to the constituent, had no responsibility for the pollution on the site and yet were going to pay out millions, even to the possible destruction of their firm, as you might understand, because they had deep pockets. And I think that is the problem with today's law and with the retroactive liability.

I have not had one firm come to me who knew they had dumped stuff carelessly and said they should not pay for it. But it is those who come, who have really no responsibility and all they have is deep pockets, and they are screaming and they probably have a

right to. Would you comment, any of you?

Mr. WALLACE. Yes, the way I see it, Congressman, under the existing law, under our proposal, and even under the administration

proposal, when you are dealing with particularly these historical sites, what you are trying to achieve is some form of rough justice. It is not going to be perfect, but this type of disposal in our history exists. It is a cost that our society and our businesses, our economy is going to have to pay for, and what you are looking at is really

three ways of arriving at that result.

The advantage that we see in our way of arriving at that result that we will have rough justice in our society, our economy, our businesses will pay for this, is that in the sort of taxing form, it can be over a gradual period of time, where there will be roughly even payments and there will not be as many injustices, company to company, site to site, situation to situation, and it will be a circumstance where the government will have a budget. They can plan and they can go after sites and they can dispense with the expenditures that would be investigating and chasing and trying to lay the blame on somebody and could spend all of those dollars in actual cleanup and protecting health and doing positive things to have the community go forward in the future.

Mr. EWING. Does anybody else want to comment on that?

Mr. Leavitt. I just wanted to say that the example you describe, the company would pay. It would not have a shock to pay it all in one year, but we will continue to pay the taxes, the increased taxes of roughly \$4 billion a year, year in and year out throughout the rest of our lives, all of which will be spread out in so many years that we can afford to do that without shocking the business so

much as to threaten potential ruin.

Mr. EWING. I guess at this point in our discussions I would have to say I think continuing retroactive liability as currently proposed is unfair, to totally drop it is unfair, and I am afraid that your taxing proposal ends up, in my opinion, coming to rest on the American consumer, and that is who pays most of the taxes in America. Business may collect them, but the consumer pays them, and I consider that probably to be unfair to many who have had no involvement in this. So I am not sure that we have come up with the right combination. Thank you.

Mr. SPISAK. Congressman, if I might just point out that in the administration's bill there is a new tax of roughly \$800 million that is created through the insurance fund, "The Earth", that goes to settle litigation, past and future. Not one dime of that money goes into the ground to clean up, to benefit the population, the minority

communities, and the businesses.

Our new taxes amount to about \$1.1 billion, just a little bit more than what is provided through "The Earth," and yet all of that money goes to cleanup. So I would point that out. That is a very

significant difference between the two bills.

Mr. EWING. Well, I understand the difference and I don't support the administration's position that we continue spending all this money on litigation. That is just not getting us anywhere. I understand that at least and I think there is a better way.

Mr. LEAVITT. May I just add?

Mr. EWING. My time is up; it is up to the Chairman.

Mr. APPLEGATE. Mr. Leavitt.

Mr. LEAVITT. Just a brief statement. Economists, I believe, will tell you that we as consumers, you and I, pay all business costs re-

gardless of whether they are taxes or just other costs such as cleanup costs. The question we really are confronting here is over what period of time will the business finance the payment for these cleanup costs. If they come all at once as a shock, the business is threatened, and that is in fact why businesses resist the cleanups. If they come over a long period of time through the taxation system, spread out over a great many constituents, business constituents, then we will be able to finance the cleanup of America.

Mr. APPLEGATE. Thank you very much, Mr. Ewing. And, gentlemen and ladies, thank you very much. The time is running rather short and we have two more panels that we want to get through, but we would ask again for your cooperation in answering questions that will be submitted to you, and I want to thank you so very much for being so articulate and I think forthright in your answers and we appreciate the direction in which you are going. Hopefully, as I said initially, we will be able to put together a successful package that everybody can agree with, which will be impossible.

Mr. WALLACE. Thank you. Mr. Chairman, with your indulgence,

if I can make one clarification for the record.

Mr. APPLEGATE. Sure.

Mr. WALLACE. I think I said it accurately earlier but just to make sure it is on the record. In terms of my reference to the Business Roundtable, the piece of our proposal that they have looked at and approved as a concept was, if necessary, up to doubling the environmental income tax. The rest of our proposal they have not taken up, as far as I understand.

Mr. APPLEGATE. It is a part of the record.

Mr. WALLACE. Thank you.

Mr. APPLEGATE. Thanks again.

Okay, we will now have our second panel, and if you can make your way up to the table, this will be Michael Kavanaugh, Chair of the National Research Council; Leslie Carothers, Vice President of Electronics Industries Association; Velma Smith, Director, Friends of the Earth; and Sue Briggum, Director, WMX Technologies, Inc..

Welcome to the committee, and we are just going to jump right in without any hesitation, and we will call upon Mike Kavanaugh.

TESTIMONY OF DR. MICHAEL C. KAVANAUGH, CHAIR, ALTERNATIVES GROUNDWATER CLEANUP, NATIONAL RESEARCH COUNCIL COMMITTEE; LESLIE CAROTHERS, VICE PRESIDENT, ENVIRONMENT, HEALTH AND SAFETY, UNITED TECHNOLOGIES, CORPORATION, ON BEHALF OF ELECTRONICS INDUSTRIES ASSOCIATION, THE NATIONAL ASSOCIATION OF MANUFACTURERS, THE NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION, AND THE SEMICONDUCTOR INDUSTRY ASSOCIATION; VELMA M. SMITH, DIRECTOR, GROUNDWATER PROTECTION PROJECT, FRIENDS OF THE EARTH; SUE M. BRIGGUM, DIRECTOR, GOVERNMENT AFFAIRS, WMX TECHNOLOGIES, INC.

Mr. KAVANAUGH. Thank you, Mr. Chairman and Members of the committee. My name is Michael Kavanaugh. I am a principal with the ENVIRON Corporation, and I am also the Chair of the Com-

mittee on Alternatives for Groundwater Cleanup established by the National Research Council under the auspices of the Water Science and Technology Board and the Board on Radioactive Waste Management.

I appreciate this opportunity to testify before this committee during its deliberations on reauthorization of Superfund, because I believe the findings and recommendations of our report, released on June 23, in prepublication copy, are relevant to these deliberations

and should be given full consideration.

The NRC Committee on Alternatives for Groundwater Cleanup included 18 nationally recognized experts in hydrogeology, geochemistry, civil and environmental engineering, risk assessment, toxicology, epidemiology, economics, environmental law, and public policy. The committee was established at the request of the Environmental Protection Agency and funding was provided by EPA, the Department of Energy, Chevron Corporation, and the Coalition on Superfund.

A draft report was completed in 1993 and subjected to the usual thorough peer review procedures required of any document released under the auspices of the NRC. The committee's findings will be available in September in the National Academy Press, and

a prepublication copy can be obtained now.

The overall objective of the committee was to evaluate the major technical and public policy issues arising from the apparent scientific limits to restoring groundwater to health based cleanup

standards or to precontamination condition.

The findings are based on an assessment of pump-and-treat systems, the most commonly used system for remediating groundwater, at 77 sites across the U.S. with at least 5 years of operational history, and in addition, we utilized the accumulated experience of committee members.

While a sampling is not necessarily statistically representative of all contaminated sites, these sites represent a broad range of site sizes, hydrogeologic conditions, and contaminant chemistry, and the committee believes this data set adequately represents the range of scientific and technical constraints experienced at all sites.

The NRC committee found that while not theoretically impossible, restoration of groundwater quality throughout the aquifer to health based cleanup standards, usually set at MCLs, is inherently complex and may not be possible at many sites. At 69 of the sites, cleanup goals have not yet been reached, and although it is possible they will be reached at some sites in the future, the committee concluded that it is either unlikely that the cleanup goal would be reached in a reasonable time frame or in some cases no conclusion could be made.

The NRC committee concluded that while conventional pump and treat is limited in its capabilities to remove contaminants from groundwater aquifers, and restore sites to health based cleanup levels, the technology is in fact effective at hydraulic containment

and the reduction and size of contaminant plumes.

One of the options to overcome these apparent limitations is the use of alternative and innovative technologies for subsurface remediation. Many of these technologies can achieve more efficient removal of contaminants compared to conventional pump and treat.

However, these and future technologies face many of the same

technical constraints faced by the pump-and-treat technology.

The NRC committee concluded, therefore, that all sites could be broadly defined in the three groups characterized by an increasing degree of difficulty in achieving complete restoration. For sites in the first category, restoration to health based cleanup levels, using either pump and treat or alternative technologies appears feasible. For sites in the second category, achieving health based cleanup levels appears improbable but not impossible. And finally for sites in the third category, cleanup to health based levels is highly improbable and likely not technically feasible even with alternative technologies due to inherent site complexities.

Based on these findings and the accumulated experience of the members of the NRC committee, we concluded that the majority of sites, and in my personal opinion perhaps more than 80 percent, are likely to be in the latter two categories. And a significant, but unknown number, again in my opinion, perhaps as high as 40 per-

cent of the sites, may be classified in the third category.

The NRC committee also reviewed the recent key policy strategies pursued by EPA which reflect their awareness of the technical difficulties in restoring sites to health based cleanup levels. And while it is too early to evaluate the effectiveness of these policies, the NRC commended EPA for recognizing the technical limitations of restoring sites to health based cleanup levels, for stressing the need of early action to reduce the spread of contaminant plumes, and for promoting technology transfer to encourage the development and use of innovative technologies. However, the NRC committee is concerned that EPA policies do not fully reflect the committee's finding that at a large number of sites restoration to health based cleanup levels may be technically impractical.

I would like to briefly go over 5 of the 10 recommendations that the committee prepared in its report; those that I feel are most rel-

evant to your deliberations.

First, the committee recommends that in evaluating whether groundwater cleanup is technically feasible, the EPA and other regulatory agencies categorize sites into the three groupings mentioned corresponding to the complexity of the site. We feel this recommendation addresses shortcomings in the guidance for evaluating the technical impracticability of groundwater restoration which appears to be the recommended approach to determining whether compliance with or attainment of health based cleanup goals, usually MCLs for groundwater, is technically impractical from an engineering perspective as stated in Section 501 of Title V of H.R. 3800.

The NRC committee points out two key shortcomings. First, the TI process is lengthy and complex and appears premised on the assumption that a small number of sites would be considered for such a lengthy review. As noted above, the committee feels a very significant number of sites will be considered eligible for the TI process leading to possible overburden of EPA staff and further delays

in the remediation process.

Second, it appears that at most sites, a TI process cannot begin until sufficient testing of alternative technologies has been completed. And permitting of TI waivers prior to determination of the final remedy appears unlikely, although not ruled out by the guid-

ance documents.

I refer the Members of the subcommittee to my written statement which describes some of the proposed solutions to that dilemma in some detail and to the final report for further discussion

of the details of our recommendations in that regard.

Second, the committee recommends that the EPA assess and develop guidance on institutional strategies for preventing public exposure to contamination over the long term at sites where reaching health based cleanup goals is infeasible with present technologies. If our conclusions are correct, that a large number of sites play be judged to be technically impractical for complete restoration, then a large number of sites will require long term, perhaps decades, of maintenance.

This is an issue that the committee did not evaluate in great detail but we strongly urge EPA and Congress to undertake the necessary studies to develop these strategies. This could be mandated

through appropriate language in H.R. 3800.

Third, although the committee recognizes that different agencies must operate under different authorities, all regulatory agencies should recognize that groundwater restoration to health based cleanup levels is impractical with existing technologies at a large number of sites. We are aware of the policy of many States for nondegradation of groundwater and the committee urges that all State agencies recognize these inherent limitations to restoration at many sites.

Fourth, the committee recommends that the Congress investigate the possibility of charging an annual "infeasibility fee" to public and private responsible parties at sites where attaining health

based standards is not presently feasible.

We see two options that are worthy of consideration with respect to the distribution of the funds from this fee. A portion could be used to support an applied groundwater research fund that would target development of new technologies for improved groundwater cleanup techniques. It is important to recognize that applied research for groundwater restoration involves close interaction between theoretical laboratory and field studies. Current research funds in this area provided by EPA are modest by any standards when compared to the magnitude of the bill being considered and augmentation of these funds by this mechanism would be beneficial.

A second portion could possibly be used to reimburse responsible parties for the use of innovative technologies should those technologies fail. If the technologies were successful, no remuneration

would be followed.

Finally, the committee recommends that EPA systematically evaluate its experience in cleaning up sites to improve understanding of the factors that prevent achievement of health based cleanup goals. The committee recommends that EPA routinely evaluate performance data from selected sites and make this information available, similar to the 24 site study that was used as part of the database evaluated by this committee.

In summary, the question can contaminated groundwater be restored to health based cleanup levels does not have a simple yes

or no answer. After approximately 10 years of pumping large volumes of water at contaminated sites nationwide, it is apparent that while a few sites may be easily restored, the majority will require patience and long-term maintenance. It is my hope that the NRC report has finally laid to rest any lingering thoughts that restoration of contaminated groundwater is a simple task. Expectations of

quick and easy solutions are illusory.

Much of the language that I have personally reviewed in Sections 501 and 502 of H.R. 3800 is consistent with the findings of the NRC committee. However, it is still not clear that Congress or EPA have fully appreciated the primary finding of this report, and that is that a substantial number of sites may be faced with insurmountable technical constraints that make cleanup of the groundwater to MCLs throughout the plume volume technically impracticable. The policy recommendations of the report arise from this key finding and provide policymakers with several innovative ways to achieve the primary goal of Superfund; namely, achieving protection of human health and the environment.

I believe that the recommendations made in the report can lead to a significant reduction in the costs of remediation while still achieving protection of human health and the environment and can provide the basis for informing the American people of the physical

realities facing groundwater restoration.

Thank you for your attention and consideration and I will be happy to answer detailed questions.

Mr. APPLEGATE. Thank you very much, Mr. Kavanaugh.

Miss Carothers.

Ms. CAROTHERS. Thank you, Mr. Chairman. Good afternoon. I am Leslie Carothers. I am the Vice President for Environment, Health and Safety for United Technologies Corporation in Hartford. We are in aerospace building systems and automotive components, including electrical components company, and I am representing here today the Electronic Industries Association, the National Association of Manufacturers, the National Electrical Manufacturing

Association, and the Semiconductor Association.

My personal background, my personal history with this program is quite a long one. Fifteen years ago, I came to Washington from EPA in Boston to cochair something called the Abandoned Sites Task Force, whose job it was to try to develop a program to deal with Love Canal and other similar situations. Since that time, I have been an EPA official, an official of two companies, and the commissioner of environment in Connecticut, so I have viewed this problem over 15 years, made many decisions involving cleanup standards, and while I am not a technical expert in groundwater treatment as is my distinguished colleague, I think I have seen this program as it works for a long time.

The companies and the associations I represent applaud the efforts that have been made so far to reach agreement on Superfund reform and we want to see legislation this year. Our problem is that for most of us, what we see as the most important single issue in this legislation; namely, the cleanup standards for groundwater,

has not yet been satisfactorily resolved.

For most of us, this is the largest, in fact, it is the only obstacle to wholehearted support of this legislation. We believe we need to reform the practice of assuming that all groundwater will be used for drinking and, therefore, should be remediated to meet drinking water standards.

Let me say at the outset that we do not necessarily object to drinking water standards as a goal, prospectively, for current new landfills or for spills, and we also support, even though we recognize the difficulty, drinking water standards as a standard for water which currently or is likely to be used as a drinking water source.

Where we part company with the bill is that we do not support a policy that mandates cleanup of the water under our Nation's old dumps and industrial plant sites to drinking water standards where there is no reasonable expectation that the water will actu-

ally be used for drinking.

And if you ask the question why, I am not going to give a very obscure answer. It is that it is a hugely complex undertaking and it is hugely expensive. It is by far the major cost item in the Superfund program and our concern, we are prepared to spend money, we are spending major money, but for drinking water, for water that is not going to be used for drink, we do not think we are getting anything for that money.

The other point I would make, and I should have said at the outset, that I have my written testimony if your hearing clerk needs

it. I am summarizing here, of course.

We are not advocating a no-action option for groundwater contamination sites. Far from it. In all cases we must assume that the public is not exposed to groundwater contamination, and as a former State official, I think there are lots of ways that that can be done.

And we also must take steps to ensure that contaminated groundwater, because it moves, does not have an adverse impact on any other water resources to which it is connected. That is not a simple matter, but none of the groundwater remediation arena is simple, and there are ways to restraining the plume and to contain and ameliorate pollution of groundwater without setting for ourselves the goal of drinking water standards for resources that will not be used for that purpose.

I do not have time to talk about all those different strategies, some of them are mentioned in my statement and perhaps others will get into them, but there are a great many things that can be done to reduce pollution of groundwater short of setting ourselves

a goal of drinking water standards.

Dr. Kavanaugh's report points out or they estimate that just going from reducing 80 percent of the pollutants to 99 percent doubles the cost. Well, that kind of marginal cost at the upper limits of control is common to other environmental strategies, and it is one that we ought to look at hard in deciding what goals we are going to set for ourselves and how much money we are going to spend.

We basically think that our policy should be consistent with the approach to other cleanup issues that has been taken in the bill before you. We think we need to consider the reasonably anticipated use of the water, as we do of the land; that we need to consider the site-specific conditions which are extremely complex. We need

to recognize the limits as well as the benefits of technology, and we need to consider the kinds of factors that would be considered in considering remedies under the rest of the bill: The cost effectiveness, the reliability over the long term, the risk to the community, if any, and the acceptability of the remedy to the community.

In concluding, I would simply say that I spent a good bit of the weekend reading Dr. Kavanaugh's prepublication draft. I compliment him and his committee for an extremely thorough and lucid exposition of the problems in this area. I am not saying that I agree with every conclusion and recommendation, but I feel that it is a piece of work that materially advances the ball in helping us to set policy in this area.

So what I am simply asking of you is that we not adopt a policy that requires those of us who want to do the right thing in this area to do what is often impossible, to achieve what is often unnecessary to really protect public health and the environment in our

communities.

So that concludes my summary and I, with the others, will be glad to take your questions at the appropriate time. Thank you.

Mr. APPLEGATE. Thank you, Miss Carothers.

Miss Smith.

Ms. SMITH. Thank you, Mr. Chairman.

I guess I will start by adding I guess we are contributing to the NRC report heading toward The New York Times best seller list here. I don't have quite the seniority of Ms. Carothers but I, too, have been putting in some time on groundwater issues, close to clocking 10 years here, and it has been a rather fascinating time to be working on groundwater issues because there has been a fas-

cinating evolution of groundwater science.

In that span of time, long held assumptions about groundwater's vulnerability to contamination have been challenged and basically overturned. Once thought sound assertions that a variety of chemicals would not reach groundwater have been proven wrong. Scientists have begun to recognize limitations on the ability of soil to indefinitely hold pollutants and molecular diffusion at one point dismissed as primarily irrelevant to fate and transport predictions has emerged as an important factor in some contamination cases.

Recently, scientists have also verified the existence of biologic communities within the groundwater regimes. It is in this context of groundwater's importance to society, which I know this committee full well understands its place in a broader ecosystem, a history of growing reliance on groundwater and the evolutionary stage of groundwater science that you are brought into the debate of how much or how little we should require of groundwater cleanup.

The basic questions: Is the current Superfund law too stringent when it comes to groundwater cleanup? Is the bill before you too stringent? Friends of the Earth would answer with a resounding no. No on both questions. Current law is tough when it comes to groundwater contamination. It is tough simply because it seems to be protective. The application of the law on the other hand has not been overly rigorous.

In implementation of the Safe Drinking Water Act's enforceable standards or maximum contaminant levels are most commonly chosen as the cleanup standards for contaminated groundwater that

may be suitable for drinking.

Contrary to the impression created by some in the industrial community, a determination that drinking water standards are applicable to a site cleanup, under existing law or under the revisions before you, does not, in itself, dictate the methods or the timelines for achieving the standards. In fact, in numerous cases EPA has made decisions which we believe are not tough enough. Mother Nature and natural attenuation, along with restrictions on water use, are frequently relied on for achieving standards and cleanup time frames spanning decades are tolerated when engineered solutions could do better.

In addition for groundwater that is flowing into surface water, the Superfund program relies heavily on the dilution solution. Another misimpression that has been furthered is the notion that EPA, once it determines the concentration based standards its cleanup standards should achieve, indiscriminately requires the application of pump and treat. The impression created has been that EPA, zealously at odds with the mainstream of science, is ignoring

data on the significant problems of pump and treat.

The impression differs from the reality on several counts. EPA does not require pump and treat at all sites; indeed, EPA does not require cleanup in all cases. EPA is not substantially out of sync with the scientific community on groundwater remediation. Everyone is learning at this point. Pump and treat is not a worthless technology. In fact, according to Mackay, Feenstra and Cherry, although it has received great criticism, conventional pump and treat is a proven technology for accomplishing plume-front containment, source zone containment, and plume removal.

Mr. Boehlert earlier this afternoon certainly was right, however, in pointing out that there is a new and growing body of knowledge in this area. The history of groundwater remediation is short and because groundwater experts have seen much of their conventional wisdom turned on its head in the last decade, the difficulties of

groundwater cleanup have only been recently recognized.

The report, the NAS report on groundwater cleanup technologies is an important contribution to this rapidly evolving arena of science. The report details the difficulties encountered with pump and treat at some sites. It also reports on some important successes with pump and treat, as does a 1993 paper entitled, An Overview

of Pump and Treat, the Petroleum Industry Perspective.

The NAS report offers useful recommendations for improving EPA's approach to cleanup. It cannot, in our view, be read to repudiate the fundamental strategies already embraced by EPA, that is, to evaluate the application of pump and treat or other remedies on a case-by-case basis, to recognize the confounding nature of DNAPLs, to acknowledge the need for technical impracticability waivers in certain instances, and to promote iterative, phased remediation programs that test and refine conceptual models of groundwater contaminant behavior.

We urge you to sort through the rhetoric on these issues and to heed the facts, to reject a groundwater write-off policy that rewards those who have been made the biggest pollution mess and stifled advancement of cleanup technology by removing cleanup requirements. We ask that Congress leave in place the statutory requirement for health based cleanup levels and maintain EPA's policy on technical and impracticability waivers. Congress should also take

action to prevent further DNAPL contamination.

Although proponents of a Superfund strategy that would tolerate groundwater dead zones are quick to point to information about the limitations of Pump and Treat, and the long-term operational costs associated with extraction remedies, they have not been so quick to point out that some of the technical difficulties involved in restoration can create difficulties for effective containment and that long-term containment also brings long-term operation and maintenance costs.

Those who support treatment of drinking water only at the point of use have likewise failed to mention the fact most States have not a few large drinking water systems but thousands of small water systems and many, many private drinking water wells. They have not suggested a workable scheme for ensuring all water uses are

protected.

Proponents of groundwater right off have recommended treatment only for water use in the near term, but they have not suggested how it is that groundwater use predictions will be made. Whose crystal ball will be used for making these predictions?

We ask this committee, do you really want to put the Federal Government squarely in a position of predicting and then controlling waters use? If you accept this, clean it only when you need it approach, that is precisely what you will do. Can it work? We think not.

Thank you very much, and I will look forward to your questions. Ms. Shepherd [presiding]. Thank you.

Ms. Briggum.

Ms. BRIGGUM. Thank you, Madam Chairwoman.

I am Sue Briggum, Director of Government Affairs for WMX Technologies, formerly Waste Management, and I would like to

talk about my organization.

WMX is a member of the Advocates for Prompt Superfund Reform. This is a 60-member group composed of large, medium, and small businesses, insurers, the financial community, and local governments. Members include NFIB, the Printers, National Association of Counties, chemical manufacturers, scrap recyclers, American Insurance Association, a number of bankers, and many individual companies. We are working, aligned with the environmental community and community activists, in support of passage of H.R. 3800. We believe this bill reflects extraordinary efforts by a broad bipartisan group to make substantial realistic reforms to the Superfund program.

Our coalition supports the approach to groundwater in H.R. 3800. We understand the bill to be based on 14 years of EPA experience under Superfund, much of which is very well described in

the NRC report that everyone is praising today.

Superfund's current approach to groundwater cleanup is premised on respect for the importance of groundwater as a resource for the future, but it also recognizes that there must be flexibility to address real world problems in attaining desired levels of protection.

If the Members of this committee find that H.R. 3800 could be misread to limit the flexibility that is available in EPA's current guidance, we would be happy to work with the committee on ways to clarify that language and to sustain a balanced consensus among environmentalists and the business community, the kind of consensus that Chair Mineta mentioned at the outset of this hearing.

Some have voiced concern about the bill's goal of requiring drinking water cleanup to a safe level not only when the resource is used now but also if the water could ever be used for drinking. We do not share this concern. Instead, we concur with H.R. 3800's goal of

preserving groundwater for future generations.

Groundwater use is much harder to predict than land use. It is difficult to accurately characterize the transport of contamination in groundwater and the impact of contamination throughout an aquifer. The reliability of institutional and engineering controls is not well tested. As a consequence, we have serious reservations about knowingly allowing vast amounts of contamination to be isolated within groundwater resources on the expectation that technology and money will be available at some time in the distant future.

We do support assuring that EPA has sufficient flexibility in implementing Superfund's cleanup goals to recognize practical scientific and engineering realities. These are very well described in the NRC report, and I would just like to briefly mention three aspects that are reported there and should continue in EPA's prac-

tice.

First, some groundwater restorations can be achieved in a reasonable time at a reasonable cost. Usually at relatively simple sites, conventional pump-and-treat systems can be effective. In addition, as stated in the NRC report, and I am quoting, "Natural attenuation may be acceptable for some zones where it can be shown that natural biological, chemical, and physical processes will lower contaminant concentrations to cleanup goals before the contaminants reach receptors." In these situations, it makes no economic or environmental sense to require installation of barriers and aggressive treatment measures based on an arbitrary point of compliance. EPA should have flexibility to consider time and distance in implementing its cleanup goals, and I believe the report of the House Energy and Commerce Committee makes this very clear.

Second, there are some sites which cannot be remediated using existing groundwater technology. DNAPL sites are most obvious. Where substantial amounts of contamination cannot be addressed with current technology, it makes sense to implement interim containment, to recognize technical infeasibility prior to construction of a full-scale cleanup system, and for EPA to accelerate its efforts to stimulate the development of better technology. And the NRC report, again, has very useful suggestions about how that might be

done.

Third, we think we could make better use of a phased approach to implementing groundwater technology. What is known as the observational method relies on phased implementation of a sensible remedial approach. Early actions, such as removal of severely contaminated water, access restrictions, and source control are implemented as quickly as feasible. The site is monitored to identify the success of these controls. Full site characterization and design of

any needed groundwater treatment system follows. This allows sensible cost-effective control measures to be implemented without waiting for complex hydrogeological studies to be completed. It also allows for groundwater hydraulics and chemistry to stabilize before a treatment plant is designed and then built. This facilitates proper sizing and selection of a treatment technology.

Again, we think it is the intent of H.R. 3800 as currently drafted to recognize these practical engineering and technological realities within the context of preserving groundwater whenever it can be used in the future. If the committee determines that this could be more clearly expressed, we would be happy to assist in any efforts

to clarify.

Thank you, and I would be happy to answer any questions.

Ms. SHEPHERD. Thank you very much.

As you just heard the bells go off, you know that there has been a vote called, and I am going to suggest that the committee stop now and take its 15 minutes to go vote and come back and we will handle the questions all at one time, since particularly we have a panel following you. So if that is all right with you, we will do that. Thank you all very much.

[Brief Recess.]

Mr. APPLEGATE. The subcommittee will be reconvened. I am sorry for the little bit of delay.

And we will move on, and at this time I am going to recognize

Ms. Shepherd.

Ms. SHEPHERD. Thank you very much. And thank you for being

patient with us. I hope we don't have to leave again soon.

I would like to ask Ms. Carothers a question about your own experience in your testimony about UTC being a potentially responsible party at a site that appeared to have water that would never be used for drinking. The site is on a flood plain, your testimony says, and there are municipal wells available, et cetera, et cetera. And, apparently, the EPA came to the conclusion that you were right and agreed with you and has not forced that water to be cleaned.

So it seems to me that the EPA, operating under current standards, was able to be flexible enough to recognize a problem and to deal with it. And I wondered why that would not be sufficient.

Ms. CAROTHERS. Well, first of all, it is our view that what discretion they had to make that decision in that case that we cited in my written testimony would be eliminated by the amendments. We think that the new version of the clean-up standards for groundwater as written into the bill that is before you is more rigid than the existing law, and so we think they would have less flexibility. And I can give you the lawyer's reasons for that if you would like.

Ms. SHEPHERD. I actually would be interested in that.

Ms. CAROTHERS. Under the current law, as we interpret it, drinking water standards are applicable to cleanups where there is a public drinking water supply in the cleanup. Otherwise they are, quote, relevant or appropriate. And under the relevant or appropriate standard, EPA has more discretion to decide whether the particular standard makes sense for the site. If it is directly applicable, it applies, period.

And as we read the provision that says the drinking water MCLs shall be met by drinking water which, quote, may be used for drinking, we regard that as a more rigid requirement for drinking

water standards than the current law.

There may be those who disagree. I think perhaps we shouldn't have cited that case. But because it was so exceptional—even EPA agreed that the water was not going to be used for drinking-and in that case it is the State that it is insisting the water in a flood plain that the town has said they will never use should be treated to drinking water standards.

I say it is exceptional, and I would cite the NRC, the academy report which looked at 300 groundwater remedial actions between October 1, 1987, and 1991. The clean-up goal was to reach drinking water standards through pumping and treating at 270 of those sites. I regard that as a pretty-pretty heavy concentration of cases where-indicating that relatively little discretion is exercised to provide for something other than drinking water standards.

Ms. SHEPHERD. Thank you.

Ms. Smith, can you tell me, relative to your testimony, what is accomplished by pumping and treating groundwater that, according to this study at least, is virtually certain to be contaminated when it is put back in the site-in other words, if you used pump and treatment and the contamination is impregnated in the soil or it is somehow composed so that it recontaminates itself?

That is what I understand the problem to be with certain of these sites that they are saying that we don't have the technical capability to clean up. And, you know, I understand, I think, all of your arguments about the future and why you wouldn't want to make those calls, but if you literally can't clean up the water, why

spend the millions and millions of dollars to-

Ms. SMITH. We certainly don't-I mean, we understand that there are no magic wands here, and we just can't wish them so.

regardless of what they would cost.

But in the example you are citing—and you said, well, if there is a virtual certainty of the conditions of the site, and one of our concerns is that, at most of these sites, there is never a virtual certainty and you need to have very good information about the site.

I don't recall right now what technical paper, but I think that on

Ms. SHEPHERD. I was referring to Mr. Kavanaugh's study, the three categories of-the sites that can be cleaned up, the sites that may be able to be cleaned up and the sites that virtually they are certain they can't.

Ms. SMITH. Right. And what we have said is that we understand that there-we do need to have technical and practicability waivers and-for those sites that fell into category number 3 and for which this was confirmed by operating a system at the site that would verify the conceptual models that you had developed about how groundwater was flowing, how the contaminants were behaving, how the different layers of aquifers were interconnected with one another, if you indeed verify that with enough information, then we are not opposed to technical and practicability waivers. What we are opposed to is expanding and offering those automatically.

I think—I mean, we were all talking at the break that we are working on the same reading list, but I think that EPA's guidance for evaluating the technical and practicability of groundwater restoration lays out the kind of information that it wants to have in cases of looking at technical and practicability. And perhaps other people on the panel want to comment that this is a rational approach to making decisions that are flexible on a case-by-case basis.

I think that perhaps the scenario that the NRC developed in terms of classifying sites into three categories might help in terms of site management, but I don't think it is inconsistent with what EPA is calling for in this guidance, which is not terribly old. It is September, 1993. So it may be that there is not a lot of experience

with it.

Ms. Shepherd. Do you expect the technology—I know nothing about the technology here for cleaning, you know, water. Do you expect the technology itself to improve greatly or have we really all the tools that we are likely to have for some time at our disposal

for cleaning water?

Ms. SMITH. Well, certainly, I mentioned crystal balls before, and I don't have a crystal ball in terms of what future advances in technology there might be. But as I was talking to a variety of technical experts in preparing for the testimony I was reminded by one expert that only a few years ago when people talked about the impossibility of cleaning up certain groundwater situations they felt that a lot of people in the field felt that light and nonaqueous

phase liquids LNAPLs would not be remedied.

And, in fact, a lot of effort has been put forward, and some of the success cases in the NRC report and EPA report and others are LNAPL contamination because a lot of ingenuity and a lot of work has gone into solving those problems. So one of our concerns is that we not create a system whereby we send a terrible market signal, that there will be no market for new and innovative technologies. They may take, you know, decades to be effective at worst sites, the number 3 sites, but I don't think we want to do anything that stops their development.

Ms. Shepherd. Would Ms. Carothers and Mr. Kavanaugh like to respond to her statement about inadvertently giving a disincentive

for further technological development?

Ms. CAROTHERS. Certainly, I would agree with Ms. Smith that

we don't want to do that.

However, it is not our position—the companies and associations I represent—that we are never going to clean up groundwater or clean it up to drinking water standards. There are many sites where drinking water sources are at issue and are at risk and that need to be protected and the water is going to be used for drinking, and the challenges of cleaning it up are just as great. And I think—we think there is a substantial inventory of sources where we would agree that everything possible needs to be done.

We have an example in the Chairman's district, I believe in Zanesville, where our automotive components plant caused a problem for the drinking water system for the town there which we are dealing with, and we are dealing with from a treatment standpoint, also. And, to be quite honest, we don't know whether the systems that we have will attain drinking water standards, but we are

going to keep trying until we find one that will. We don't suggest that we will eliminate the market for the pressure for better tech-

nology. That is essential, not our intent.

Mr. KAVANAUGH. If I could just add to that, the committee evaluated the performance and capabilities of new and alternative technologies and, as I mentioned, felt that all of those technologies would also face many of the constraints that pump and treat does.

But I think it is very important to recognize that at sites there is partial cleanup and there is complete cleanup. And one of the key points of our findings was that many sites can be looked at as two distinct parts. One is the source area and the other is the so-called dissolved plume. And in many cases the dissolved plume can, in effect, be recaptured, referred and perhaps remediated to appropriate clean-up levels and drinking water levels while the source can be contained.

There are limits to those technologies as well. But I think that the committee's report, in my own personal opinion, is that the tools are not there yet, that, in fact, we have some tools but they are still very much in developmental stage for dealing with those difficult source problems and for portions of dissolved plumes which

threaten drinking water aquifers.

So I think the answer to that question is that technology still needs to evolve to remove as much as is technically practical. We don't want to have situations where you have thousands of sites that will require decades and decades of maintenance which looks like that may happen. Technology has got to be relied on to get us as much out of there as is technically feasible. So that we are dealing with a situation where long-term maintenance may be reduced as I feel strongly, and the committee felt as well, that the long-term maintenance issue is one of the key issues that lies ahead for us and technology will help us deal with that.

Ms. Briggum. If I could mention something, as a company that includes Rust Remedial Services, which is a clean-up contractor, I

think that the bill does several things that will be helpful.

Ms. SHEPHERD. H.R. 3800?

Ms. Briggum. Yes. One is it allows us to get a bill this year. EPA has said there is nothing that will help sustain development and investment better than making sure you know what the standards are going to be in the next year. If we wait beyond reauthorization this year, I think there will be a lag time and a disincentive for investment

I think the clear standards in this bill are very helpful, the recognition of interim containment where technology is not available. Nobody thinks it makes sense to spend the money where you are not going to be able to do the job. You should be doing the good things that are possible in the current system. And also the subsidy where the PRPs undertake innovative technologies that do not work will be helpful for risk takers and will develop the market.

Ms. Shepherd. Mr. Chairman, if I could ask one last question, I would like to know what the differences are between the businesses that you represent, Ms. Briggum, and the businesses that Ms. Carothers represents. Because you are on opposite ends of the philosophy spectrum here. Is it a difference in amount of involvement? What is the difference?

Ms. Briggum. I think we are very close in many ways in terms of wanting to make sure that the language of the bill recognizes practical engineering realities. I really don't think there is a big difference there. There is a difference in the point of view of our lawyers about whether the present language is sufficient, but that really is a semantic difference.

I think the other difference probably reflects the 2 years that I have spent in coalition building as a member of NACEPT and Advocates of Prompt Reform. I spent a great deal of time with Velma and others, and I think that is really ingrained, our sense that we

need to make compromises.

Although we understand we may be spending more money than we would like to as PRPs sometimes, we understand that there are a lot of people affected by this program. These are compromise views, admittedly. And we think that the consensus process gets us a bill that not only can be passed, but can be implemented in a way in which the people who are affected will be much more enthusiastic about the system.

Ms. SHEPHERD. Thank you. Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you very much, Ms. Shepherd.

And it looks like our panel has dissipated. And what I think we will do is just move on to the next panel. I just want to say thank you very, very much for your input, your information. You certainly articulated your positions very well.

And we will be looking forward to working with you as we move along through the process. And make yourself available to answer some questions that we will submit. We would appreciate that very

much. Thank you.

Our third panel will consist of the Association of State and Territorial Solid Waste Management Officials, Claudia Kerbawy. And you are the Chief, Site Management Unit, Michigan Superfund

And you will be accompanied by Mark Giesfeldt. I know I can

pronounce mine. It is easy.

Mr. GIESFELDT. That was really close.

Mr. APPLEGATE. And Mark is Chief of the Emergency and Reme-

dial Response Section, Wisconsin Superfund Program.

Welcome to the committee, and we would like to hear what you have to say. And we shall go with Ms. Kerbawy.

TESTIMONY OF CLAUDIA KERBAWY, CHIEF, SITE MANAGE-MENT UNIT, MICHIGAN SUPERFUND PROGRAM ON BEHALF OF THE ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT, (ASTSWMO), ACCOMPANIED BY MARK GIESFELDT, CHIEF, EMERGENCY AND REMEDIAL RESPONSE SECTION, WISCONSIN DEPARTMENT OF NATURAL SOURCES, AND CHAIR, CERCLA SUBCOMMTTEE, ASTSWMO

Ms. KERBAWY. I would like to point out that we are both up here representing the Association of State and Territorial Solid Waste Management Officials. I am here-Mark is the Chair of ASTSWMO's CERCLA subcommittee, and I am the primary spokesperson on reauthorization issues for the Association.

As you mentioned, we both work for State programs as well. And as the day-to-day implementors of the State and Federal clean-up programs we believe that we can offer a unique perspective to this debate.

I would like to ask that the entire testimony that we have developed be included as part of the official record for today's hearing.

I will just be summarizing parts of it.

We do want to point out that we applaud Congress for recognizing the need in H.R. 3800 to substantially increase the State role in the Superfund program. Today, I would like to provide you with several of ASTSWMO's comments and recommendations on Title II, the State role specifically, and on other components of H.R. 3800 we believe will have significant impact on State clean-up programs.

Let me begin by reiterating our support for the concept of delegation. Delegation is a concept which is long overdue. States have remediated over 2,600 non-NPL sites to the construction completion state, and State capabilities have clearly grown and will continue

to grow.

We do believe, however, that an authorization process where States implement their own laws and programs in lieu of the Federal Government is the only true, long-term method for achieving the maximum output available to us by State clean-up programs. ASTSWMO, therefore, believes the concepts of reauthorization should be revisited. We caution that only an authorization process which affords States the opportunity to implement their own laws in a manner substantially consistent with the outcomes achieved by the proposed Superfund reform act is worthy of consideration.

An authorization proposal which would force States to mirror the Federal Superfund program in all aspects is not, in our perspective, any different than the proposed delegation program and, therefore,

has no added value.

We also note that any authorization model developed should be deemed satisfactory to all relevant Superfund stakeholders in order to ensure timely passage of Superfund this year. Therefore, we would rather forgo an authorization program than accept either a flawed authorization model or stand in the way of reauthorization this year—as long as a viable delegation program is included in H.R. 3800.

We do have several suggestions for improving the State role title of H.R. 3800 in order to ensure that a viable delegation program is indeed developed. There are several comments in the testimony which identify places where clarification of the bill is needed.

In particular, there is a problematic area regarding the transition language which eliminated the ability of States to have the lead for sites where delegation is not pursued. There certainly are some States who will still be building their capabilities and won't be ready for delegation. For those States which want to continue to build their capabilities provisions of Section 104(d) of CERCLA need to be maintained.

With regard to the State cost share, currently States are responsible for 10 percent of the remedial action and 100 percent of the operation and maintenance cost. H.R. 3800 provides for a State to pay or assure payment of 15 percent of the cost of all response ac-

tions and program support or other costs for which the State re-

ceives funds.

Also, under the new allocation system, States will be responsible for providing matching for orphan shares financed via the fund and for the shares for generators or transporters of municipal solid waste which exceeds the 10 percent cap. In tight budgetary times this may become a significant increase in cost to be placed on State government.

ASTSWMO, along with the National Governors Association, has recommended that the State match for both cleanup actions and

maintenance and operation be 10 percent for all sites.

H.R. 3800 includes the requirement for a State registry. State clean-up managers are very concerned with the concept of a State registry for many reasons.

First and foremost, this appears to be an unnecessary and un-

funded mandate placed on the shoulders of State government.

Second, we question the intent of this concept. Many States have established successful voluntary clean-up programs resulting in large amounts of land being returned to productive and economic use. Developing yet another list of potentially contaminated sites of

this kind is likely to exacerbate our brown fields problem.

If Congress continues to pursue this, at the minimum this registry must be fully funded by the Federal Government. And the words "believed to present a current or potential hazard to human health or the environment" must be replaced with the words "confirmed contaminated sites based on a preliminary assessment' site inspection" and an exiting mechanism, as created by State regulatory agencies, should be allowed.

We wish to congratulate Congress for establishing an expedited transition of Federal facility sites to State authority. Federal facility issues are extremely important to States, and we must caution that any weakening of the Federal facilities provisions found in Title II may very well jeopardize many States' support for H.R.

3800.

We also wish to congratulate Congressman Oxley for developing the Title III amendment on voluntary cleanups. The majority of sites in this country are State sites, and we hope that the subcommittee will agree with the Energy and Commerce Committee that States are the sole implementors of the voluntary cleanup programs. We strongly recommend that this title be retained as written.

There is a section contained in H.R. 3800, Section 130(a)(2), which provides for pre-introduction RODs to go through an allocation procedure. We don't believe that the EPA or the States have the resources or the personnel to attempt this momentous task, and we don't believe that this is the best use of limited government resources, especially as it does not result in additional environmental or public health improvements.

We would like to see those provisions, as well as 130(a)(3), which allows the allocation process to be conducted in any non-NPL facil-

ity, to be reevaluated and deleted.

From our perspective as State waste officials, the retroactive strict joint and several liability is vitally important to compelling cleanups at non-NPL sites as well as NPL sites. When determining the fate of the Federal Superfund program, it is important to remember that as of 1990 over 40 States have adopted some form of the strict, joint and several liability provision and that any changes in the current Federal law would have serious ramifications in the world of non-NPL cleanups. It is particularly of concern for the 10,000 to 20,000 sites which are those being addressed by the States.

Another key issue for ASTSWMO is the development of a single numerical risk level. We believe this is vital to the success of the Superfund program and, more particularly, the reforms suggested in Title V of this bill. Our members have found the current risk range to be the single biggest cause of delay and dispute when completing remedies for the sites. A balancing of costs and technology coupled with single numerical goals will have a very desirable effect on new remedy selection practices.

Thank you for allowing me to present the State perspective, and

I would be happy to answer any questions that you may have.

Mr. Applegate. Mr. Giesfeldt, do you have anything you wanted to say at this time?

Mr. GIESFELDT. No, thank you, Mr. Chairman. I am here to help

Claudia out with any questions that come up.

Mr. APPLEGATE. Let me ask you this. Can you explain to the panel what the difference between an authorized and a delegated program is and why does your organization favor a delegated Superfund program?

Ms. Kerbawy. Delegated program would be where the States implement the Federal law using the Federal authorities. Authorization would involve the States implementing the Federal program

using their own State laws and authorities.

Actually, the Association favors authorization where the States are allowed to use their own laws to implement the Federal program. However, right now there is some concern that there is not enough time to build the consensus amongst all of the stakeholders in the process to support an authorization program which would be acceptable to the States.

One authorization process that was proposed would be that all the States would have to change their laws to mirror the Federal

programs, and that was unacceptable to the States.

Considering where we stand, we think that having delegation is better than the current situation, and we would rather see a delegated program rather than authorization where we would all have to change our laws.

Mr. APPLEGATE. So you sort of reached that by process of elimi-

nation.

Ms. KERBAWY. Yes.

Mr. APPLEGATE. In your written testimony you state that 41 States have State Superfund-type programs and that 44 States have funding authorities for remedial activities. Are these figures still accurate? And if that be the case and if there are, say, 41 States who have their own mini-Superfund programs, do States want Superfund authority or are their current programs sufficient?

Ms. KERBAWY. I believe that those—the figures are based on the Environmental Law Institute's study which is, I believe, about a

year old-1990. So that is older. I am not sure that there has been

a whole lot of change in those numbers, however.

As far as whether the States want to implement the Federal programs or whether having their own laws is adequate, right now we have a dual system going on, and the States are very good and very concerned about the NPL sites. We have a definite interest in being involved in the remedy selection process and being involved in the implementation of the remedies at NPL sites as well as the non-NPL sites that we are involved in, and we are vitally interested in either delegation of the program or authorization to implement the program.

And, yes, that is the position of ASTSWMO, which is representative of State waste management officials and that is, I believe, also

the National Governors Association's position.

Mr. APPLEGATE. Thank you.

Did you have something, Mr. Giesfeldt? Well, let me just say this, that you summarized, you said, and your entire statement will be made a part of the record.

Ms. KERBAWY. Thank you.

Mr. APPLEGATE. And we will have some additional questions that

we would like to submit to you.

And-but at the moment I think what I will do is turn to Mr. Geren of Texas and see if he has some tough questions that he could give to you.

Mr. GEREN. Thank you, Mr. Chairman. I don't have any ques-

tions at this time.

Mr. APPLEGATE. No questions.

Let me see. I guess I better go to Ms. Shepherd. Ms. SHEPHERD. Yes, I just have a question to ask.

I have a very large Superfund site in my district that we are working with EPA on, and there is a dispute between the community and the State and EPA about the methodology of cleaning it up. The State and the community, who have a lot to gain by putting this land back into the tax base, they want the waste to be picked up and moved and put someplace else. The EPA wants to cap it, because that is protective, and it is a cheaper way of doing

So we are having a tiff here which is an interesting one in light of what you said, because you are trying to protect—and I am, too, all the time—trying to protect the States from unnecessary costs and costs that fall into this dreaded category of unfunded man-

dates.

On the other hand, in my State and in this particular community, they want the most expensive thing to happen. And, ideally, they want the Federal Government to pay for it. So, you know, how does that-I am sure that is a typical situation because this site is in the middle of an industrial area which, if it were moved away, could be an extraordinarily rich place because it could be developed. But the Federal Government can protect the health of the citizens of this area, they think, by putting a cap on it.

And I just wondered if in that example you can fit the position that your Association is taking. You want to cap what the State pays at 10 percent. Do you want that even though it may mean that the land would never be returned to the tax base because it could never be used because it would simply be capped? Do you

want it to be that inflexible?

Ms. KERBAWY. I am not sure that I guite understand the inflexibility that would come with a 10 percent versus a 15 percent cap on the costs. However, I do understand there are limited resources. I think that the Association understands that there are limited resources out there to do cleanups. However, we do have to be protective. I think that when we make a remedy selection decision, we need to evaluate what is actually protective and what are the total

It is possible that in evaluating costs of cleanup we are not taking into consideration all of the long-term costs of O&M, of lost opportunity and those types of things, and maybe we should be look-

ing at that if there is some way to bring it in.

I think that when we look at these sites we all need to take a look at what is going to be protective, and we also have to look at the cost-effectiveness in the long run and factor in the cost.

One of the concerns that we have really had with the current match scenario is that the States are responsible for paying 10 percent of the capital costs but 100 percent of the operation and maintenance costs. And what we have seen occurring is that there is a real preference in that scenario for having a low capital cost remedy with high O&M. And we are extremely encouraged to see that the current language in H.R. 3800 does include a level match sys-

tem for remedial action and operation and maintenance.

I guess when we look at whether we are doing 10 percent or 15 percent, though, I think we have to consider that the States are doing a lot of remedial action work out there. We have over 20,000 sites which are non-NPL sites that are being addressed by the States so the States are putting in a tremendous amount of resources along with responsible parties in addressing a huge universe of sites. And so when we look at 10 percent match that we are putting towards the NPL sites that is really only a small portion of the overall picture.

Ms. SHEPHERD. And currently I think it is possible for the State to put in more if they choose to and they think it is worth it to

them, because our State is considering that.

Ms. KERBAWY. There is a provision for a betterment if you are looking for a remedy that is more protective than what EPA would select, yes.

Ms. SHEPHERD. Thank you very much.

Mr. GEREN. Mr. Chairman, could I ask a question at this time?

Mr. APPLEGATE. If Mr. Barcia yields.

Mr. GEREN. I just wanted to follow up on one point, Mrs. Kerbawy. You said it earlier, and I promised myself I was going to remember how to pronounce it, and I got down to it and choked.

But you made a point that I would like to carry on to just make another quick point in another part of the bill where you have incentives in the bill that you pointed up to low ball the capital side because of the match requirement and then spend more on the maintenance. You have those kinds of perverse incentives where the choices are not made necessarily totally rationally. They are skewed by where the financial incentives are. You are able to put a higher burden on the States if you go short on the capital clean-

up and longer on the maintenance.

There is another provision in the bill that I think causes the reverse problem, and, Mr. Chairman, I just wanted to raise it at this time because it is one which the States feel probably just the opposite about and that is the Schaefer amendment which has to do

with cleanup on Federal sites.

And the Schaefer amendment—it is just the opposite types of incentives there. There are no State matches at all. And the concern I have is that those same kind of incentives that are complained about here are going to be at work there but cause just the opposite thing to happen. You would have the States not having any match at all so their incentive would be to gold-plate a cleanup. And you all don't have any incentive to not ask for the moon, particularly if it is a DOD site which appears to have a bottomless pit of money to do the cleanup.

And, Mr. Chairman, I wanted to raise this point at this time because I think it is important that, as we work our way through the Superfund bill, that we understand that by the various matches that are required at some times and not required in others that we end up putting some perverse incentives that may cause the par-

ties to act irrationally.

And the—I think the Schaefer amendment would cause the States to act not rationally because there is no counterincentive to

not ask for the moon or gold-plate those cleanups.

And I understand the concern that you all have about requiring a match on the capital side and not on the maintenance side, and I just wanted to raise it at this time and hope that we bear in mind that problem throughout the debate on this Superfund bill that we don't leave in place some incentives that cause the parties to the cleanup to act in a way other than the best approach to solve the pollution problem.

I don't know if you would like to comment on that. I am not asking you to, but I wanted to make sure that we recognize that problem and recognize that it is a problem not only where you bring

it up but it is in other areas as well.

Ms. KERBAWY. Actually, I would like to comment on that, if I may. I believe that the Shaffer amendment also includes provisions that the Federal facilities can't be held to a higher standard than other facilities that are being addressed by the clean-up program.

Mr. GEREN. That is what I was referring to, the incentive for the States to perhaps gold-plate it, and they have the benefits of the Federal Government having to pay whatever, the State standards.

Ms. Kerbawy. I appreciate what you are saying, but I do think that the amendments do include provisions that you can't hold the Federal facilities to a higher standard, and I think that it is very important for the States to maintain that standard process of remedy selection.

If we hold responsible parties or Federal facilities to a higher standard than what we would hold publicly funded cleanups, that is going to jeopardize our entire programs in our own legislatures as well as, I am sure, in this forum. And it is very important to us to use a standardized process in dealing with all of the responsible parties that we do.

We don't provide match for the responsible party cleanups either, and yet we use the same process for selecting remedies in both sit-

uations.

Mr. GEREN. Well, in some State that isn't quite as pure as yours they may see the Federal Government as having a deeper pocket than some of the other parties that are at risk. And where you might not want to run some company out of your State and you might not want to bankrupt that company and have all the economic implications associated with that, you might not consider your actions as a threat to the solvency of the Federal Government.

And I just think it is important as we work through this that we have to realize that human nature is at work and if you can get somebody else to pay for something and you don't have to pay anything, you tend to choose that route just as you complain about this

incentive to do the capital versus the maintenance.

So, I appreciate my friend, Mr. Barcia, extending me this opportunity to interject at this point. I just thought it was appropriate to bring it up in the context of the point that you had made in response to Ms. Shepherd's remarks.

Thank you, Mr. Chairman.

Mr. APPLEGATE. Mr. Barcia's time has expired, so we will renew

that over again. Mr. Barcia.

Mr. BARCIA. Thank you, Mr. Chairman. It was certainly a privilege and an honor to yield to my good, good friend from Texas, and I thought that his comments and questions were right on target. I also would like to make a few comments and pose two questions.

tions.

And, one, thank you, Claudia, for your appearance before the panel today. Thank you for your excellent testimony on what is happening back in our home State of Michigan and the good job that you are doing in helping to remediate some of those contaminated sites back in the Midwest and particularly protecting the resource base, especially the world's largest supply of fresh water in the Great Lakes basin.

As a matter of fact, I wanted to mention that I have a site in my district—I am not sure if you are familiar with it, but it is in my hometown of Bay City. But I have been working on it for the past 18 months since I arrived here in Congress, and it is called the Middlegrounds Landfill. It is located in the middle of the Saginaw River on an island. And, it is currently leaching about 5,000 parts per million into the Saginaw River and eventually into Lake Huron. I know that the EPA standard for PCBs is about 1 to 10 parts per million so we are greatly in excess of the Federal standard in terms of our leaching of this PCB contamination into the Saginaw River and Saginaw Bay.

EPA has told me that this pollution is so bad that it is likely affecting drinking water from Saginaw to Buffalo and on to Rochester. Yet it has not been listed nor is it currently being cleaned up. I understand that I may be catching you off guard with a question on a specific site, but could you comment briefly on what the best alternative may be from your organization and the State's per-

spective for such a non-NPL site.

And I would just like to mention that we are—our local officials and my office have been working on getting approval from the EPA

for an alternative technology which has been developed by a company in Ontario, Canada. It would clean up this site in a much more cost-effective way than the estimated \$100 million in clean-up costs that could be involved in cleaning up properly this landfill site.

And then, second, do you think a listing on the National Priorities List would be helpful? How would you like to see the process

structured?

And, finally, if you could comment additionally on non-NPL sites and, if you would prefer, submit a more specific and detailed answer for the record.

Thank you, Mr. Chairman.

Ms. Kerbawy. I would like to preface my comments with a note that I am not specifically involved in the site, though I do know some general things about it, and I would like to provide a more specific answer for the record.

[The information follows:]

Response to question from Rep. Barcia



The state of Michigan is strongly in support of listing the Bay City Middlegrounds site on the National Priorities List and moving forward to the expeditious remedy of the site. The Michigan Department of Natural Resources' (MDNR) Bay City District Office initiated the request to the MDNR's Pre-Remedial Unit to pursue the HRS scoring and NPL nomination for the site. The MDNR district and pre-remedial staff have been directly involved in investigation and innovative treatment evaluation for the site. Listing on NPL is certainly appropriate, but the over 2 year process for trying to get the site through the listing process after scoring has proven to be extremely frustrating.

Region 5, EPA, has been supportive and aggressive in trying to get the site listed. The delays in listing have been due to inefficient, incomplete and conflicting Quality Assurance (QA) review by the EPA QA contractor. This is not new, similar problems existed with the previous contractor. In both cases. EPA Headquarters has deferred control over HRS package review to the contractor. The result is that the contractor approves the package, briefs EPA upper management and makes policy decisions concerning the intent of site listing, basic definitions, and model interpretation. The process could be improved if real control over the contractor and decision making on listing were retained by EPA. It would also be helpful if the Regional HRS coordinator had direct responsibility for liaison with the QA contractor and direct contact between the scientist who scored the site and the QA contractor could occur.

The Federal Superfund Program does not need to identify and evaluate all non NPL sites in the states. In over 40 states there are programs to address these. A much more cooperative and efficient relationship between the states and EPA needs to be created to identify and list the true NPL caliber sites which are in need of listing on the NPL.

Ms. KERBAWY. I can answer some of the question that you asked,

though.

We are pursuing listing of this site on the NPL and have been for some time and are somewhat frustrated by the fact that it is not currently listed. We have expected that for a while now. We think that it would be helpful.

It is a site which, unfortunately, is going to be expensive to resolve and certainly qualifies as a caliber of site that would be on the NPL. We are extremely interested in the site, and we want to be involved in the decisions with regards to the remedy at the site. It is a site which I think fits well into the delegation scenario.

We would like to see it on the NPL. We would like to utilize the authorities and the funding that go along with listing on the National Priorities List. It is certainly a site which merits that kind

of attention.

And yet we would like to—we have been involved in the investigation of the site to date. We have been involved as well in the evaluation of technologies for remediation and certainly would like to follow through with that in a delegation mode to clean-up.

And, like I said, I think that a more detailed answer for the

record will be provided.

Mr. Barcia. Thank you very much, Mr. Chairman.

Mr. GIESFELDT. Mr. Chairman, can I also—in addition to the comment about the non-NPL sites, the Association in cooperation with U.S. EPA has put together a study which is called the non-NPL study to show the capabilities of the States and how we are dealing with cleaning up contamination sites that are not on the National Priorities List. That shows that the States have—that is the 2,600 sites that Claudia has alluded to.

The States have significant capability. When that report is final, we would be happy to provide it to the committees, but, again, it shows how States are working on many, many different kinds of

contamination sites.

Thank you.

Mr. BARCIA. Mr. Chairman, could I ask unanimous consent to have that study included in the subcommittee's record when it is available?

Mr. APPLEGATE. How large is the study?

Mr. GIESFELDT. It is about half-inch to three-quarters of an inch. I couldn't give you the page numbers. It has a summary on each State and is a compilation of the data on what is going on in the Federal program and in the individual programs.

Mr. BARCIA. Would there be a summary that could be included

to the committee?

Mr. GIESFELDT. Yes, I think that would be easy to put together. Mr. APPLEGATE. Yes, we could do that. If you would submit an executive summary, we will make that a part of the record.

[The information follows:]

United States Environmental Protection Agency Office of Solid Waste and Emergency Response Washington, DC 20460 OSWER 9242.2-09 PB 94-963402 EPA 540/R-94/001 July, 1994

\$EPA

Association of State and Territorial

ASTSWMO

Solid Waste Management Officials

A Report on State/Territory Non-NPL Hazardous Waste Site Cleanup Efforts for the Period 1980 - 1992



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Preface

This report was sponsored by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and the U. S. Environmental Protection Agency (EPA). The combined dedication of their management and staff was instrumental to the project's success.

In addition, the dedication, time and resources provided by the States and Territories in preparing and submitting the requested data is to be commended; particularly since their participation was voluntary.

The focus of the report is on the non-National Priority List (NPL) hazardous waste sites being cleaned up by the States/Territories. However, in order to tell the whole Superfund program story, data on Federal hazardous waste cleanup efforts have been included. The time frame of the data is 1980 through 1992, except in a few instances, as noted. The report, therefore, is historic in nature and tells the story of what has happened rather than what is expected to happen.

The extensive efforts of ASTSWMO, EPA and the States and Territories have been successful in preparing this report, which is the first of its kind in the life of the Superfund Program. Special thanks are also extended to the contractor, Kensington Systems, Inc. (KSI), who provided the major support for this effort.

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EXECUTIVE SUMMARY

Introduction

This report presents the results of an analysis of the State/Territory non-National Priorities List (non-NPL) cleanup activities in the United States. It discusses Superfund removal and remedial actions, the predominant remedies selected, and the costs of cleanup.

The time frame of the data presented within this report covers the period from 1980 through 1992. The report focuses on State/Territory non-NPL hazardous waste cleanup efforts. However, to afford a full view of all Superfund cleanup efforts, data on Federal hazardous waste cleanups are included.

A key point is that the data is historical. The report represents what has happened over the first twelve years of the Superfund program. It does not purport to represent what is currently happening in Superfund or what is anticipated to happen in Superfund.

This Executive Summary presents highlights of how the study was conducted, the data collected and the analysis performed. It commences with the identification of the need for the data and concludes with a discussion of the results obtained. This Executive Summary is divided into sections on State/Territory data, Federal data, combined data, and the conclusions drawn from the data.

The Universe of Sites

In understanding the universe of abandoned or uncontrolled hazardous waste sites, it is important to understand how the United States Environmental Protection Agency (EPA) determines sites for Federal Superfund response. The computer database known as the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) contains a listing of all abandoned or uncontrolled hazardous waste sites that have been reported to EPA as potential Superfund sites. As of December 31, 1992, a total of 36,781 sites were included in CERCLIS. This study focuses on State/Territory sites where, at least, a Preliminary Assessment (PA) or removal action had been completed. By subtracting Federal sites that still needed a PA and adding some actions that were not in CERCLIS, the universe for this study was 35,166 sites.

EPA has a statutory requirement to use Superfund resources to remediate the most serious of these sites. The process EPA uses to identify the appropriate sites for action begins with an assessment for any imminent threats to human health or the environment;

if such threats are identified, an emergency removal action is taken. Next, a PA is performed to determine the likelihood of serious potential threats. If a site is not "screened out" during the PA, a Site Inspection (SI) is performed. An SI includes field sampling and analysis to quantify the site's contamination. If a site is not screened out during the SI stage, it is scored for potential listing on the National Priorities List (NPL), and those that meet listing criteria are added to the NPL. In December 1992, there were 1,280 NPL sites.

For those sites that are "screened out" at any one of the above steps, EPA determines that No Further Remedial Action is Planned (NFRAP). These NFRAP sites are referred to States or other EPA programs for any further response action. NFRAP sites that are referred to the States and Territories are a major source of sites addressed by the States and Territories and, hence, are the focus of this study.

State/Territory Data

The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and the U.S. Environmental Protection Agency (EPA) acknowledged that a void existed with regard to data on the cleanup efforts of the States and Territories at non-NPL hazardous waste sites. To fill this void, States and Territories were asked to provide data on site status, predominant remedies, State and potentially responsible party (PRP) cleanup costs, start and completion dates, and site identification information like name, location and State ID number.

This information has been entered into a database which now permits individual State/Territory reports and national summaries. This report is the most thorough compilation of State and Territorial cleanup data and, for the first time, these data are presented in a single format.

Thirty-nine States and two Territories responded to this request for data. Of these, one Territory, the Virgin Islands, stated that they did not have any sites of concern under their jurisdiction. The State of New York provided detailed site information which is included in the national summary data, however, they did not want their individual state charts published in Appendix A. The State of Connecticut was unable to provide the requisite detailed backup for its data. Alaska, California and Texas were only able to submit detailed data on some of their sites.

The terms and resulting data used in this report must be qualified. Each State and Territorial "Superfund-like" program is different. The States are not required to use Federal definitions for terms like "remedial", "removal" or "construction completion." This report's use of these terms to describe and measure cleanups in a State/Territory program will not be fully consistent either among States/Territories or with the Federal data. For the purposes of this study, ASTSWMO, in consultation with many of their members, agreed to use the Federal Superfund program terminology as the most commonly understood set of

terms. Even if there were perfect understanding of these Federal terms, the States/Territories still had to fit their programs to these definitions and may have interpreted the wording of the data matrix differently. Individual States/Territories also varied in the amount of time they were able to commit to this study. All of these factors contribute to the accuracy and variability of the presented data. It is important to keep these qualifications on terms in mind when comparing States and Territories to each other and to the Federal cleanup data.

On a national level, as of December 31, 1992, some of the compiled study results from the States and Territories are:

- 21,905 total sites were reported
- 3,527 sites have at least one completed State removal
- 2,689 sites have completed construction through a State remedial process (entire site work was completed except ongoing "operation and maintenance" activities)
- 11,000 sites were described as still active in some part of their State remedial process (the process from preliminary assessment through remedial action)
- 4,834 sites were in a State version of the remedial investigation/feasibility study phase
- 4,261 sites had a duration of less than one year from the start of the remedial investigation to the completion of the remedial action or, if a removal, the duration is from the beginning to the end of the removal action
- 3,395 sites reported a total cost of \$1,205,531,234, which includes both State and PRP costs.

The cost figures reported are limited since many States/Territories did not report State and/or PRP costs; only some State or PRP site costs were reported by 30 of the participating States/Territories. Due to some States' accounting procedures, certain costs were not assigned to specific sites or were not easily retrievable for this study. The "An Analysis of State Superfund Programs: 50-State Study" (1991 Update), a study sponsored by EPA and conducted by the Environmental Law Institute (ELI), concluded that the States spent nearly \$500 million for their cleanup efforts in 1991 alone.

A complete compilation of the State/Territory data, i.e., the State/Territory National Data Summary, can be found at the end of this Executive Summary. Appendix A contains a complete presentation for each of the 40 States/Territories that provided data to ASTSWMO.

Federal Data

The Federal information is taken from the CERCLIS database and other official EPA data sources. CERCLIS contains detailed data on all fifty States, the U.S. Territories of American Samoa, Guam, Midway Island, Puerto Rico, Virgin Islands, Wake Island and the Trust Territories, as well as, the Navajo Nation and the District of Columbia. A compilation of the Federal data, i.e., the Federal National Data Summary, is presented in a table at the end of this Executive Summary. Since the CERCLIS database is constantly being updated, the CERCLIS information presented herein may not be the most accurate at the time it is reviewed. Additionally, since CERCLIS is not the official financial reporting system for EPA cost data, the Federal cost data presented may not necessarily be accurate. In addition, Federal cost data are represented in this study by financial obligations and not final expenditures.

As mentioned earlier, in addition to the data derived from CERCLIS, the Federal data presented in this study are augmented by other data sources, e.g., the Superfund Management Report. For the period through December 31, 1992, some of the Federal results include:

- 35,166 sites existed
- 2,365 sites had completed removal actions
- 155 sites had remedial construction completions
- 9,134 sites were active in the process from preliminary assessment to remedial action
- 900 sites had a duration of less than 1 year from the start of the Remedial investigation to the completion of the remedial action or, if a removal, the duration is from the beginning to the end of the removal action
- 2,866 sites reported total Federal obligations of \$4,782,175,666.

A complete compilation of the Federal data can be found at the end of this Executive Summary.

Combined State/Territory and Federal Data

The combined State/Territory and Federal data is limited to the 38 States and 1 Territory that responded to the ASTSWMO data matrix with detailed information and represents the status of individual sites, as of December 31, 1992. Reviewing three key cleanup accomplishments of the State/Territory data and the Federal data reveals:

- 5,892 sites had completed removal actions -- 3,527 State/Territory and 2,365
 Federal
- 2,844 sites had remedial construction completions 2,689 State/Territory and
 155 Federal
- 20,134 sites were still in the remedial process -- 11,000 State/Territory and 9,134 Federal -- from a completed PA through a Remedial Action (RA).

Conclusions

Differences in terminology and systems for tracking accomplishments by the States/Territories and between States/Territories and the EPA make the development of conclusions a challenge. However, the findings and conclusions presented herein are useful as a general measure of activities. The reader needs to remember that these data are historical in nature and the conclusions may not apply at the time this report is reviewed based upon additional or more current data.

State/Territory Governments, by December 31, 1992, had:

- Completed several thousand sites
 - 2,689 or 14% of the identified sites which required remedial action had completed construction
 - 5,828 or 30% of the identified sites required no further remedial action, based on preliminary assessment, site inspection or remedial investigation
- Completed a large number of removal actions -- 3,527 or 36% of the total number of removal sites had been completed
- Utilized potentially responsible parties as the majority funding source
 - Enforcement actions: 3,692 or 31% of primary funding

- Voluntary/property transfer actions: 6,448 or 55% of primary funding
- Increased the pace of site activities in the latter half of the Superfund program
 - 6,561 or 78% of the sites reporting start dates were started in the years 1986 through 1992 as compared to only 22% of the sites having been started prior to 1986
 - 6,170 or 91% of the sites reporting completion dates were completed in the years 1986 through 1992 as compared to only 9% of the sites having been completed prior to 1986
- Selected containment, either on-site or off-site, as the predominant remedy at 76% of the sites
 - 2,438 or 61% of the predominant remedies used off-site containment
 - 599 or 15% of the predominant remedies used on-site containment
- Of the on-going sites as of December 31, 1992, States/Territories had moved a large number of sites from the preliminary assessment and site inspections phases to the remedial design and remedial action phases
 - PA/SI accounted for 3,887 sites or 40% of the last remedial phase
 - RI/FS accounted for 4,834 sites or 50% of the last remedial phase
 - RD and RA accounted for 941 sites or 10% of the last remedial phase
- Used site security as a predominant remedy at a low number of sites; only at 197 sites or 5% of the remedies selected and it was used as the only remedy in 74 of the 197 sites
- Used innovative technologies as a predominant remedy at 11 sites or 0.3% of the reported remedies selected.

Federal Government, by December 31, 1992, had:

- Completed construction at 155 NPL sites
- Increased the annual number of removal and remedial cleanup completions since the Superfund Amendments and Reauthorization Act (SARA) of 1986 was passed (1987 - 1992 time period vs pre-1987 time period)

- Completed removal actions at 2,365 sites
- A relatively even distribution of predominant remedies for all actions, both removal and remedial; 2,248 or 84% of the reported predominant remedies were divided among:
 - On-site containment at 24%
 - Site security at 22%
 - Off-site containment at 21%
 - Off-site treatment at 17%
- Utilized innovative technology in the cleanup efforts; seven construction completion sites had utilized innovative technology. However, according to an internal EPA study, undertook 263 innovative technology projects, prior to December 31, 1992.

Although the data obtained for this report is limited, it does represent the first attempt at compiling the "total" accomplishments influenced by the Superfund program. These accomplishments represent tremendous effort by all involved, the States, Territories, and the Federal government. ASTSWMO members have expressed an interest in updating the data in this study in the future.

.

State/Territory

The States and Territories reported a total of 21,905 sites, with 1,017 having neither a Removal nor a Remedial status. These 1,017 sites represent sites such as those on Indian reservations, which are known but are not under the direct jurisdiction of a State or Territory. Of the remaining 20,888 sites, 8,421 were Removal and Remedial sites, 1,371 were sites with only Removal actions, and 11,096 sites were sites with only Remedial actions.

The total number of Removal sites was 9,792, with 3,527 completed as of December 31, 1992. The total number of Remedial sites was 19,517 with 2,689 construction completion—i.e., the total of All Remedial Action Complete Except Operations and Maintenance (260) and All Remedial Actions Complete (2,429).

The most prevalent Last Remedial Phase was Remedial Investigation or Feasibility Study (RI/FS), with 4,834 of the 9,662 Active Remedial sites reporting a Last Remedial Phase.

The three key Predominant Remedies were Off-Site Containment with 2,438, On-Site Containment with 599, and On-Site Treatment with 455.

Total Cost of \$1,205,531,234 was reported for 3,395 sites, with the cost represented by **State** cost of \$650,000,770 for 2,167 of the sites and **PRP** cost of \$555,530,464 for 1,385 of the sites.

A Primary Funding source was reported for 11,778 sites, with Voluntary/Property Transfer representing 6,448 of them. Enforcement was the Primary Funding source on a national level with 3,692 sites.

Duration of Response Actions reported for 6,052 sites had an average of 13 months and 15 days.

National Data Summary (Total Sites = 21,905)

Removal	9,792	100.00%
Ongoing	6,265	63.98%
Complete	3,527	36.02%
Remedial	19,517	100.00%
Active	11,000	56.36%
No Further Action	8,517	43.64%
No Remedial Action Based on PA/SI or RI	5,828	68.43%
All Remedial Action Complete Except Operations/Maint.	260	3.05%
All Remedial Action Complete	2,429	28.52%

Last Remedial Phase	9,662	100.00%
PA/SI	3,887	40.23%
RI/FS	4,834	50.03%
RD	571	5.91%
RA	370	3.83%

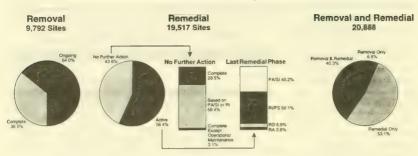
Predominant Remedies	4.005	100.00%
On-Site Treatment	455	11.36%
On-Site Containment	599	14.96%
Off-Site Containment	2,438	60.87%
Off-Site Treatment	238	5.94%
Population Protection	67	1.67%
Site Security	197	4.92%
Innovative Technology	11	0.28%

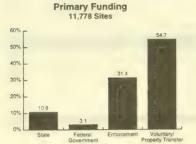
Total Cost		\$1.205.531,234.00
State Sites: 2,167		\$650,000,770.00
PRP Sites: 1.385	State Average: \$299,954.21	\$555,530,464.00
	State Average: \$401,105.03	

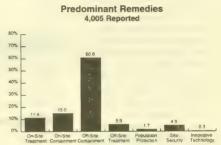
Primary Funding	11,778	100.00%
State	1,273	10.81%
Federal Government	365	3.10%
Enforcement	3,692	31.35%
Voluntary/Property Transfer	6,448	54.74%

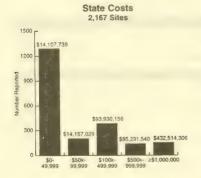
Duration of Response Actions	6,052	100.00%
Less Than 12 Months	4,261	70.40%
12-23 Months	858	14.18%
24-35 Months	356	5.88%
36-47 Months	246	4.06%
48-59 Months	125	2.07%
60-71 Months	73	1.21%
More Than 71 Months	133	2.20%

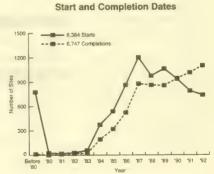
State/Territory











ES-9

Federal

Data derived for CERCLIS reported 35,166 sites; 2,331 had both Removal and Remedial actions, 465 had only Removal actions, and 32,370 had only Remedial actions.

The total number of sites with Remedial actions was 34,701, with 9,134 Active, 22,876 No Further Federal Superfund Remedial Action Based on PA/SI or RI, 155 construction completion, and 2,536 Deferred to Other Programs. The 22,876 sites under PA/SI or RI represent sites that were under consideration for transfer to the States/Territories for follow-up and subsequent action.

The Predominant Remedies were On-Site Containment with 652 occurrences, followed by Site Security with 583 occurrences and Off-Site Containment with 558 occurrences.

The Total Cost was \$4,782,175,666 for 2,866 sites with an average of \$1,668,588 per site. The average cost for the 143 construction completion sites with reported cost was \$2,361,629. The average cost for the 73 construction completion sites with Federal Fund Lead was \$3,953,849. However, it was estimated that future sites with construction completion Remedial actions will average \$25,000,000 due to the larger and more complex nature of these sites.

The average Duration of Response Actions of the 1,405 sites reporting start and completion dates was 16 months and 21 days. The average Duration of Response Actions of the 113 construction completion Remedial actions reporting start and completion dates was 65 months and 25 days. It is estimated that ongoing construction Remedial actions will take 94 months to complete and future construction Remedial actions will take 121 months to complete, due to the size and complexity of these sites.

National Data Summary (Total Sites = 35,166)

Removal	2,796	100.00%
Ongoing	431	15.419
Complete	2,365	84.599
lemedial	34,701	100.00%
Active	9,134	26.329
No Further Federal Superfund Remedial Action Planned	25,567	73.689
Deferred to Other Programs	2,536	9.929
Based on PA/SI or RI	22,876	89.479
All Remedial Action Complete Except Operations/Maint	. 48	0.199
All Remedial Action Complete	107	0.429

Last nemediai Phase	9,194	100.00%
PA/SI	8,764	95.33%
RI/FS	254	2.76%
RD	171	1.86%
RA	5	0.05%
	9	

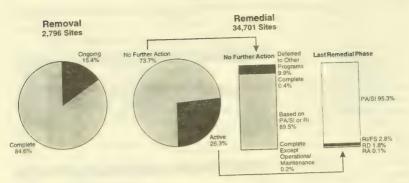
Predominant Remedies	2,663	100.00%
On-Site Treatment	228	8.56%
On-Site Containment	652	24.48%
Off-Site Containment	558	20.95%
Off-Site Treatment	455	17.09%
Population Protection	172	6.46%
Site Security	583	21.89%
Innovative Technology	15	0.57%

Federal Cost		\$4,782,175.566.00
Sites: 2,866	Average: \$1,668,588.86	\$4,782,175,666.00

Duration of Response Actions	1,405	100.00%
Less Than 12 Months	900	64 06
12-23 Months	226	16.09
24-35 Months	87	6.19
36-47 Months	54	3.84
48-59 Months	33	2.35
60-71 Months	28	1.99
More Than 71 Months	77	5.48

Fund Lead	1.188	100.00%
Coast Guard	4	0.34
EPA Fund-Financed	435	36.61
EPA In-House	0	0.00
Federal Enforcement	3	0.25
Federal Facilities	114	9.60
Mixed Fund Federal/RP	4	0.34
PRP Lead under State	22	1.85
PRP Response under State	69	5.81
Responsible Party	497	41.84
State, Enforcement	1	0.08
State, Fund-Financed	37	3.11
State, No Fund Money	2	0.17
Tribal Lead, Fund-Financed	Ü	0.00

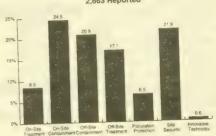
Federal



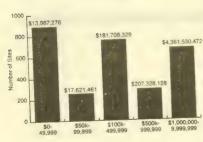
Removal and Remedial 35,166 Sites



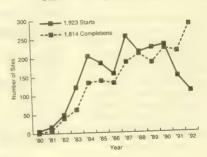
Predominant Remedies 2.663 Reported



Federal Costs 2,866 Sites



Start and Completion Dates



State/Territory and Federal

Data Com	parison—	Data	base
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	State/Territory	Federal	Total
Total Sites	21,905	35,166	N/A ¹
Removal	9.792	2.796	12.588
Ongoing	6,265	431	6,696
Complete	3,527	2,365	5,892
Remedial	19,517	34,701	N/A
Active	11,000	9,134	20,134
No Further Action	8,517	25,567	N/A
Deferred to Other Programs	N/A²	2,536	N/A ³
No Remedial Action Based on PA/SI or RI	5,828	22,876	N/A¹
All Remedial Action Complete Except Operations/Maint.	260	48	308
All Remedial Action Complete	2.429	107	2,536
Last Remedial Phase	9,662	9.194	18,856
PA/SI	3,887	8,764	12,651
RI/FS	4,834	254	5,088
RD	571	171	742
RA	370	5	375
Predominant Remedies	4,005	2,663	6,668
On-Site Treatment	455	228	683
On-Site Containment	599	652	1,251
Off-Site Containment	2,438	558	2,996
Off-Site Treatment	238	455	693
Population Protection	67 197	172 583	239 780
Site Security Innovative Technology	11	15	26
Innovative Technology			
Public Cost	\$650,000,770.00	\$4,782,175,666,00	\$5,432,176,436,00
Sites:	2,167	2,866	5,053
Average:	\$299,954.21	\$1,668,588.86	\$1,075,039.86
Duration of Response Actions	6.052	1.405	7.457
Less Than 12 Months	4,261	900	5,161
12-23 Months	858	226	1,084
24–35 Months	356	87	443
36–47 Months	246	54	300
48–59 Months	125	33	158 101
60–71 Months	73 133	28 77	210
More Than 71 Months	133	11	210

'Not additive due to the fact that some of the Federal sites may have been transferred to the states/territories and may therefore be counted in both jurisdictions since CERCLIS does not delete a site once a site record has been entered.

²States/territories do not transfer sites to other programs; therefore, the field is not applicable to states/territories.

³Not additive due to footnote 2.

CHAPTER 1

INTRODUCTION AND REPORT METHODOLOGY

In 1980, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) was passed and was enhanced, in 1986, by the Superfund Amendments and Reauthorization Act (SARA). The program came to be known as Superfund. Superfund enables EPA to assess certain waste sites, classifying and cleaning up those sites that require the attention and resources of CERCLA and the Federal government. Once a site has been discovered or identified, it is assessed as to the severity of the health hazard it poses for human health and the environment. A determination is then made on whether the site needs the attention and resources of CERCLA and the Federal government. The cleanup responsibility for the remaining sites, after assessment, is transferred to the States and Territories.

The Universe of Sites

In understanding the universe of abandoned or uncontrolled hazardous waste sites, it is important to understand how EPA determines sites for Federal Superfund response. The Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) inventory contains a listing of all the abandoned or uncontrolled hazardous waste sites that have been reported to EPA as potential Superfund sites. As of December 31, 1992, a total of 36,781 sites were included in CERCLIS. This Study focuses on State/Territory sites where at least a Preliminary Assessment (PA) or removal action had been completed. By subtracting Federal sites that still needed a PA and adding some actions that were not in CERCLIS, the universe for this study was 35,166 sites.

EPA has a statutory requirement to use Superfund resources to remediate the most serious of these sites. The process EPA uses to identify the appropriate sites for action is described below.

- Sites are assessed for any imminent threats to human health or the environment; if such threats are identified, an emergency removal action is taken.
- Next, a Preliminary Assessment (PA) is performed to determine the likelihood of serious potential threats; for some 40 percent of the sites, EPA determines that "No Further Remedial Action is Planned" (NFRAP) following the PA.

These NFRAP sites are referred to States or other EPA programs for any further response action.

- If sites are not "screened out" following the PA, a Site Inspection (SI) is performed, which includes field sampling and analysis to quantify the site's contamination; at roughly 50 percent of the sites, EPA determines that NFRAP, by the Federal program, following the SI.
- If sites are not "screened out" during the SI stage, they are scored for potential listing on the National Priorities List (NPL), and those that meet listing criteria are added to the NPL. In December 1992 there were 1,280 NPL sites.
- Referred NFRAP sites are a major source of sites addressed by the States and Territories, and are the focus of this study.

Background

This report represents the status of the State/Territory hazardous waste cleanup efforts as of December 31, 1992. The decision to prepare this report was made at the 1992 Annual Meeting of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). At the meeting, ASTSWMO and the U.S. Environmental Protection Agency (EPA) agreed on the need to collect data on State efforts for non-NPL hazardous waste cleanups. This agreement was predicated on the abundance of data on Superfund cleanups at NPL sites and other Federal actions, but a lack of data on State/Territory efforts. In order to obtain a complete picture of the national cleanup efforts, State/Territory level data were needed. Thus, the decision to collect the data was made by ASTSWMO and EPA.

The format for the collection of the State/Territory level data was determined at ASTSWMO's mid-year meeting in April of 1993, where it was decided that ASTSWMO would send a matrix form to all the States and Territories requesting, on a voluntary basis, the desired data. The data matrix form was distributed on July 8, 1993. In August 1993, data were received by ASTSWMO. In September a contract was awarded for the compilation of a database on State/Territory non-NPL cleanups, based on ASTSWMO's matrix form. The contract was also for the presentation and analysis of the collected data and for the retrieval of specific data in response to queries. Additionally, the contract was to compile Federal data received from CERCLIS and other official EPA data sources. A copy of the study's data matrix form, which ASTSWMO sent to State Superfund managers for completion, can be found in Appendix B of this report.

Data Targeted

The State/Territory matrix asked for data for the calendar years 1980 through 1992. The requested data included:

- Site name and location
- Site status, i.e., removal, remedial, active, completed
- Last remedial phase, if remedial active
- Predominant remedy
- Primary funding source
- Both State and potentially responsible party (PRP) costs
- Duration dates, i.e., start and completion dates
- State identification number.

The same data were requested from CERCLIS with the exception that State ID was replaced by EPA ID and primary funding was replaced by fund lead. Also, a few extra data fields for future consideration were requested of CERCLIS.

Targeted Sites

The sites targeted for this study consisted of all locations where hazardous waste cleanup efforts were performed by States/Territories directly, under State/Territory enforcement authority, and under State/Territory voluntary and property transfer programs. NPL sites, Resource Conservation and Recovery Act (RCRA) corrective actions and underground and above ground storage tanks and petroleum spills were excluded.

All 50 States, seven Territories, and the District of Columbia were asked to participate. The following 39 States and two Territories were able to provide the requested data:

Alabama	Kansas	Nebraska	Rhode Island
Alaska	Louisiana	Nevada	South Carolina
Arizona	Maine	New Jersey	South Dakota
California	Maryland	New Mexico	Tennessee
Colorado	Massachusetts	New York	Texas
Connecticut	Michigan	North Carolina	Utah
Delaware	Minnesota	Ohio	Virginia
Florida	Mississippi	Oklahoma	Washington
Illinois	Missouri	Oregon	Wisconsin
Indiana	Montana	Pennsylvania	

The two participating territories are American Samoa and The Virgin Islands. The CERCLIS data included the 50 States, all seven Territories, the Navajo Nation, and the District of Columbia. The CERCLIS data also contain NPL sites.

Study Benefits

The two primary benefits of this study are increased knowledge and better communications:

- Increased knowledge will:
 - provide a more comprehensive picture of Superfund influenced State/Territory cleanups, both complete and underway; and
 - provide useful information on the growing amount of State/Territorylevel cleanup activity that is occurring outside the umbrella of the Federal system.
- Better communications will:
 - allow ASTSWMO, EPA and the States and Territories to demonstrate the successes of the Superfund program; and
 - support the continued dialogue with Congress on clarifying the roles of the States and Territories in the re-authorization of Superfund.

Data Definitions

Due to the differences in the methods and systems used by the States and Territories to account for their cleanup accomplishments, the ASTSWMO data matrix used specific definitions for the information requested in order to have a common core for the data being received. The following are some of the definitions used in the ASTSWMO data matrix and details on how they affected the data presentations.

- Site Status -- A site that had:
 - a removal only -- a site that had one or more removal-type actions and no remedial activity;
 - a remedial only -- a site that had one or more remedial-type actions and no removal activity; or

 a combined removal and remedial -- a site that had both removal type and remedial-type actions.

A combined removal and remedial site can be both complete, both active, removal complete and remedial active or removal ongoing and remedial complete. However, to be a site in this study, a preliminary assessment must have been completed or a removal action started. The total number of sites for any State/Territory should equal the total of the number of removal only sites, remedial only sites and combined removal and remedial sites. However, two additional categories used in this report — sites with removal activities and sites with remedial activities will not add up to the total of sites in a State; the total of these two categories will exceed the total sites by the number of sites that had both removal and remedial activities.

- Last Remedial Phase -- This is the last remedial phase which had been completed by December 31, 1992. It is used only for active or ongoing remedial sites; the phases are:
 - PA/SI: preliminary assessment/site investigation completed but the remedial investigation has not been completed;
 - RI/FS: remedial investigation/feasibility study completed but the remedial design has not been completed;
 - RD: remedial design completed but the remedial action has not been completed; and
 - RA: remedial action completed but site activities other than operation and maintenance are ongoing.

The total number of phases should equal the total number of active remedial sites.

- No Further Action -- Applies only to remedial sites and addresses the three ways in which a remedial site can be considered as complete:
 - No required remedial action needed based on the results of a PA/SI or RI;
 - All remedial action completed, except ongoing operation and maintenance; and
 - All remedial action completed; no ongoing remedial action, of any sort, remains.

The total number of these three categories should total the number of no further action remedial sites.

- Predominant Remedies -- The major types of remediation used at a completed site. Each completed site could report up to six predominant remedies. Only the most significant remedies were to have been reported. Active sites were not to have reported predominant remedies.
- Total Costs -- All known State and PRP costs associated with the completed cleanup of a site. A site can have State costs or PRP costs or both. State costs were reported individually, regardless of whether the site had PRP costs. Likewise, PRP costs were reported individually, regardless of whether the site had State costs. Therefore, the total number of sites reporting costs by State and PRP will exceed the total number of sites with costs if any of the sites of concern have both State and PRP costs. Idditionally, for combined sites with both a completed removal and completed remedial, any reported cost is considered the cost of both of the actions. In instances where costs were known to have been incurred, but the exact amount is not known, "unknown" is reported for the State costs and/or PRP costs as appropriate.
- Primary Funding Source -- The primary or "lead" funding source for a completed site is reported as one of the following four categories: State, Federal, enforcement, and voluntary/property transfer. Voluntary is an action defined by an individual State/Territory. It was combined with property transfer because many States/Territories consider the financing of a cleanup prior to the transfer of a property to be a voluntary act. A primary funding source may be reported even if total costs were not reported. Thus, there is not a requirement for the number of sites which reported costs to equal those which reported primary funding sources.
- Duration of Response Actions -- For remedial only sites, the duration is the time period from the start of the remedial investigation through the completion of the remedial action. For combined removal and remedial sites, the duration is the time period for the completed remedial action. If the remedial is active and the removal is complete, then the duration is the time frame for the completed removal. For completed removal only and completed remedial only sites, the time frame is for the individual site actions.

■ Total Costs -- all costs are Federal costs

- Primary Funding Source -- is replaced by event lead where the following categories are used (from OSWER Directive 9200.3-01H-1):
 - Coast Guard -- Work performed by Coast Guard; limited to removals (applies to response events)
 - EPA Fund Financed -- Fund financed response actions performed by EPA (applies to response events)
 - EPA In-House -- Response activities performed by EPA using in-house resources
 - Federal Enforcement -- Enforcement activities performed by EPA or work done by enforcement program (also applies to record of decision (ROD) events at PRP financed response events); historically (Pre-FY 1989) applied to RI/FS and RD response events
 - Federal Facilities -- Response activities performed by the Federal facility with oversight provided by EPA and/or the State at sites designated as Federal facilities on the NPL; also applies to RODs at Federal facilities
 - Mixed Funding Federal/Responsible Party (RP) -- Preauthorization mixed funding work performed by PRP under a Federal consent decree (CD) with an agreement that the Fund will provide some reimbursement to the PRP (applies to response events)
 - Potential Responsible Party (PRP) Lead under State -- PRP response under a State order/CD and no EPA oversight support or money provided through a CA and no other formal agreement exists between EPA and the State
 - PRP Response under State -- PRP financed response action performed by PRP under State order/CD with PRP oversight paid for or conducted by EPA through an EPA cooperative agreement (CA) with the State or, if oversight is not funded by EPA, a State memorandum of agreement (SMOA) or other formal document between EPA and the State exists which allows EPA review of PRP deliverables (applies to response events)
 - Responsible Party -- PRP financed response actions performed by the PRP under a Federal order/CD (applies to response events)

- State, Enforcement -- Enforcement activities performed by a State; money provided through a CA or if not funded by EPA, a comparable enforcement document exists (also applies to ROD events at State financed and PRP lead under State response events)
- State, Fund-Financed -- Fund financed response actions performed by a state; money provided through a CA (applies to response events)
- State, No Fund Money -- State financed (no Fund dollars) response actions performed by the State (applies to response events)
- Tribal Lead, Fund Financed Indian Tribal Governments
- Duration of response actions -- is the time from the discovery of a site through the remedial action.

Data Interpretation

The major interpretation of the data is left to the reader. The data are presented in different arrays and formats to facilitate that interpretation. The data are factual in that they have been extracted from the data provided by the States, Territories and CERCLIS and other official EPA sources with only minimal interpretations made and conclusions drawn. The reader is left to use the data and his/her knowledge and experience to generate more in-depth analyses.

The data sheets, in Appendix A, compile the data provided on the study instruments by all participating States/Territories. Percentages have been added to assist the reader in determining the relative impact of specific data categories. Written profiles are provided to highlight salient points and contain, when appropriate, information pertaining to the State or Territory not displayed directly by the data sheets, e.g., the cost of completed removals in both State and PRP dollars. These data, although captured by the study instrument, were obtained via a report that compiles and combines completed sites and costs. Another report depicts the predominant remedies for completed sites by removal and remedial actions. These reports and others were developed in response to information requested from ASTSWMO and EPA.

The graphics which accompany the State/Territory data sheets visually present the major data groups of site status, predominant remedies, cost, primary funding and site duration.

Data Accuracy

The presented data are as accurate as the data submitted by the participating States and Territories and retrieved from CERCLIS. To assure the accuracy of the submitted State/Territory data, a series of verification processes were undertaken. First, in November 1993, a site-by-site listing and the data sheet was sent to the participating States and Territories.

Then, corrections and enhancements received from the States and Territories were input into the database and a revised data sheet accompanied by graphic displays of major data categories and a written profile of the presented data were produced. This package of information was next returned to the States and Territories for review. Additional corrections and enhancements received by the States and Territories were input to the database and a final information display produced. Finally, the ASTSWMO Board of Directors reviewed the draft report and approved its release on April 20th, 1994 at the ASTSWMO Mid-Year meeting.

The CERCLIS data accuracy test used was a review of the results of the extraction with other official EPA data sources. In those instances when exact matches did not occur, further investigation with appropriate EPA staff was pursued until valid and substantiated results could be obtained.

Data Flow

The data submitted by the States and Territories were in the form of hard copy, i.e., the completed data matrix, and/or a disk file. When only hard copy was received, it was reviewed to flag obvious inconsistencies, e.g., neither a removal or remedial status was entered. All data, including inconsistencies were put into the system. Site-by-site listings were produced with the inconsistent data highlighted. The site-by-site listing and a data sheet were returned to the affected States and Territories.

Data received from States/Territories on disks were converted, where possible, to the system's required input format and processed through the edit routine. Sites with inconsistencies were flagged. Like data received via hard copy only, site-by-site listings with highlighted inconsistencies and a data sheet were sent to the affected States and Territories.

For those State/Territory submittals that were in hard copy, but not the format of the data matrix and/or on disk but in an incompatible format, time was spent via telephone with the individual States and Territories to rectify the difficulties. Once resolved, the data were input to the system as noted above.

To assure that the State/Territory data were as accurate as possible, all data presented in this report have been reviewed by the appropriate parties with all their final corrections and enhancements being considered.

For the CERCLIS data extraction, a general query was established requesting all the data elements comparable to those in the ASTSWMO data matrix. The query was converted into a more detailed extraction statement with the identification of specific CERCLIS data fields and logic. The details of the extraction statement were reviewed in a walk-through prior to the actual run. The results of the extraction run were reviewed against known results such as the 155 remedial construction completions which occurred by December 31, 1992. CERCLIS results, not in agreement with other official EPA sources, were reviewed and, if necessary, rerun until valid results were obtained.

CHAPTER 2

REPORT FINDINGS

This chapter presents the findings of the two different data collection efforts. The findings are presented by:

- State/Territory
- Federal
- Combined State/Territory and Federal.

State/Territory, as of December 31, 1992

The State/Territory national data summary of the 21,905 sites shows that 8,421 were combined removal and remedial sites, 1,371 were removal only sites and 11,096 were remedial only sites. Appendix A, State/Territory Data, presents the data collected from the 40 participants. The remaining 1,017 sites represent independent sites that were known, but were not under the authority of the States/Territories. For example, a site on an Indian reservation would be in this category.

The number of sites with State/Territory removal activities was 9,792, of which 6,265 were ongoing and 3,527 were complete. The number of sites with State/Territory remedial activity was 19,517, of which 11,000 were still active, 5,828 were determined not to need further State/Territory remedial action based on site assessment, and 2,689 were considered construction completions. For the active remedials, the prevalent last completed remedial phases were remedial investigation and feasibility study (RI/FS) and preliminary assessment and site inspection (PA/SI) with 4,834 and 3,887 occurrences, respectively.

The leading predominant remedies for State/Territory reported data were excavation and final removal to off-site landfill (1,458 sites) followed by encapsulation or over-packing with final off-site disposal (676 sites), final removal to off-site landfill (304 sites), and surface capping (271 sites). None of the other 33 predominant remedy categories had more than 150 occurrences.

Cost data were submitted for 3,395 sites or only 15% of the sites and totaled \$1,205,531,234. Since the study design precluded use of partial costs known to the States and Territories, most States and Territories were not able to supply information on total PRP costs. Therefore, total cost, particularly the PRP cost, is significantly understated.

The source of funding for the cleanup activities was provided for 11,778 sites. Of these, 10,140 or 86% were conducted by private parties. Voluntary/property transfer cleanups accounted for the funding for 55% of all sites.

Duration, from the start of a remedial investigation through the completed remedial action, was reported for 6,052 sites of which 4,261 sites (70%) were completed in less than 1 year.

Federal, as of December 31, 1992

The Federal data provides information on 35,166 sites: 2,331 were combined removal and remedial sites, 465 were removal only sites and 32,370 were remedial only sites. This means that 2,796 sites had removal events and 34,701 sites had remedial events. Ongoing removals totaled 431 and completed removals totaled 2,365. The 34,701 sites with remedial activities break down into the following categories: 9,134 were active, 22,876 had no further Federal action based on PA/SI or RI, 155 were construction completions, and 2,536 were deferred to other programs.

Federal cost figures were compiled from EPA's Integrated Financial Management System (IFMS). Seventy-three of the 155 construction completion sites were Federal fund lead sites with obligated costs totaling \$288,630,961 or an average of \$3,953,849 per site. Total obligated costs for the 143 sites with available financial data (this included sites with mixed funding and PRP oversight costs) was \$337,441,389 or an average of \$2,359,730 per site. The average Federal cost for all sites (2,860) was \$1,668,589, some of which were still active.

The average duration of the Federal site completions varied based on whether a removal or a remedial action had occurred. In examining those sites that reported start and completion dates, where only a removal action or only a remedial action had occurred, the following is observed:

		Sites	Average Months
10	Removal Only Sites	286	13.89
	Remedial Only Sites	43	73.35

The predominant remedy was on-site containment (652 sites). Within CERCLIS, each site can have an unlimited number of predominant remedies. However, for this report, a limit of six predominant remedies per site was imposed to be consistent with the State/Territory survey. This has not had an adverse effect on the report since only 19 sites, or less than five-hundredths of one percent (<0.05%), had listed more than six predominant remedies. Table 1, which follows, presents the reported predominant remedies for the 155

construction completions and the 400 completed removal only sites. Within this context, the 155 construction completions were completed remedials with or without removal activity. However, if removal activity was present, they were likewise completed. The 400 completed removal only sites were sites with no ongoing removal actions and no remedial activity, either active or complete.

TABLE 1
PREDOMINANT REMEDIES: CONSTRUCTION COMPLETION
AND COMPLETED REMOVAL ONLY SITES

CONSTRU COMPLETIC		COMPLETED ONLY		PREDOMINANT REMEDIES					
96	34.5%	212	25.6%	On-Site containment					
65	23.4%	239	28.8%	Site Security					
37	13.3%	97	11.7%	Off-Site Containment					
36	13.0%	125	15.1%	Off-Site Treatment					
28	10.1%	79	9.5%	On-Site Treatment					
13	4.6%	70	8.4%	Population Protection					
3	1.1%	7	0.9%	Innovative Technology					

Combined State/Territory and Federal

Combining the State/Territory and Federal data reveals the results and status of the entire Superfund effort as of December 31, 1992. Table 2 displays key Federal and State/Territory accomplishments.

TABLE 2
KEY FEDERAL AND STATE/TERRITORY ACCOMPLISHMENTS

Accomplishment	Federal Data	State/Territory Data
Sites with completed removals	2,365 Sites	3,527 Sites
Sites with remedial construction completions	155 Sites	2,689 Sites
Sites with active remedials	9,134 Sites	11,000 Sites

Totaling the numbers from the table above, key accomplishments were as follows:

- 5,892 completed removals
- 2,844 remedial construction completions
- 20,134 ongoing sites in the remedial process.

A full compilation of the State/Territory data and the Federal data is contained in the display at the end of the Executive Summary. Included in this comparison display are the numbers as derived from the two databases.

As of December 31, 1992 cost and obligation data from the two database sources (i.e., the ASTSWMO data matrix and CERCLIS) total \$5,987,706,900 of which \$4,782,175,666 were from 2,866 Federal sites; \$650,000,770 were State/Territory costs based on 30 States reporting costs; and \$555,530,464 were PRP costs based on 16 States reporting PRP costs. The total number of sites for which costs were reported was 6,261, with 2,866 Federal sites, 2,167 State/Territory sites and 1,385 PRP sites. (The total exceeds the 6,261 because some sites have reported both PRP and State/Territory costs yet these sites were counted only once in the total.) In the following Table 3, the sites for which State/Territory costs and Federal obligations were reported are summarized with dollar averages for remedial and removal only completions.

TABLE 3
PUBLIC DOLLARS FOR CONSTRUCTION COMPLETIONS
AND REMOVAL ONLY SITES

Universe	Con	emedial struction letions Sites	R	ompleted lemoval nly Sites		
	Sites	Average \$	Sites	Average \$		
Total	770	588,001	726	3,768,791		
State/Territory	627	183,490	343	46,915		
Federal	143	2,361,629	383	7,072,442		

By adding the PRP costs reported by the States/Territories to the costs in Table 3, the State/Territory average for remedial construction completions would increase to \$259,695 based on 1,601 sites and the average for completed removal only sites would be increased to \$105,115 based on 374 sites. However, the combined State/Territory and Federal average for remedial construction completions would be reduced to \$432,044 based on 1,744 sites and the combined average for completed removal only sites would be reduced to \$3,644,638 based on 757 sites.

To avoid confusion between this report of historical data from 1980 - 1992 with more recent data collected by EPA, the following information is presented. It was not possible to obtain similar updates from the States/Territories; however, it is obvious that additional cleanups have been completed by the States/Territories.

CURRENT FEDERAL CONTEXT

In addition to the 155 remedial construction completion sites discussed in this report, the following is presented:

- -- an additional 89 remedial construction completions have been identified over the 18-month period from January 1, 1993 through June 30, 1994, bringing the total to **244** as of June 30, 1994; an increase of over 57% within the last 18 months;
- -- Based on a 1993 survey of site managers, the average cost of future non-Federal Facility remedial construction completions is expected to be approximately \$25 million. This is reported in the EPA Office of Solid Waste and Emergency Response Directive 9200.2-21, letter from Elliott P. Laws to Congressmen Swift and Dingell, dated January 28, 1994;
- The average cost is impacted by the relatively small number of sites with very high cleanup costs; 16% of the operable units on the sites account for over 60% of all capital costs incurred at NPL sites; The majority of projects (69%) have capital costs of less than \$10 million and 38% have capital costs of less than three million dollars.
- Approximately 89% of the total site cleanup cost is for capital costs; the remaining 11% includes site assessment, study and design activities. In addition, operation and maintenance costs of \$50,000 per year is projected over a 20 year period.
- Currently the average duration of a construction complete site, as reported by other EPA sources, is 94 months starting at the initial discovery of the site and going through the remedial action phase. In the future, it is estimated that the duration will be 121 months from the discovery to completion because of the more complex nature of the sites to be cleaned up.

Data Retrieval

The system accepts ad hoc queries based upon the available data in the system. For example, the system can respond to a query for the PRP costs by completed removal only sites or by predominant remedy. Some examples of the type of queries possible include:

Query: What was the predominant remedy for completed removal only sites?

Response: The predominant remedy was encapsulation or overpacking with final off-

site disposal for removals.

Query: What was the total study site count by site activity?

Response: One thousand three hundred seventy-one were removal only sites; 11,096

were remedial only sites; 8,421 were combined removal and remedial sites; and 1,017 sites were designated as neither removal nor remedial. These 1,017 sites represent sites identified by States/Territories, but were

not under the jurisdiction of either a State or Territory.

CHAPTER 3

CONCLUSIONS

The conclusions presented herein are based only on the data and the direct experiences encountered over the course of this project. They do not include programmatic elements that, if applied, could affect the result. For example, additional research has been recently concluded in preparation for the Reauthorization of CERCLA. Much of this research is aimed at projecting future costs and performance of the program. Those projections will not always match the historical findings of this report. The conclusions of this report, therefore, should be read with the caveat that the data, as a stand alone element, is insufficient to provide the total picture of the current State/Territory or Federal efforts.

There are two comments the researchers would like to make about the study design and process. First, should the collection effort be continued on a periodic basis, the universe of the required data should be expanded to permit a more in-depth and accurate analysis of both the State/Territory and Federal hazardous waste cleanup efforts. For example, the fact that most of the data in this study is summarized at the site level does not allow us to thoroughly analyze cost and duration data at sites where multiple remedial and/or removal activities have occurred.

The second comment is that the two databases established are powerful tools that, although not perfect, can still provide insight into the State/Territory and Federal cleanup efforts. The information can help interested parties analyze those efforts and identify where improvements may be warranted. The need, then, is to minimize the inconsistencies within the databases and to permit an easy access such that interested parties can retrieve and analyze data of concern to them.

The following report conclusions are targeted to the specific universes of State/Territory and Federal data.

State/Territory

The conclusions regarding the State/Territory efforts are presented according to the following four topic areas:

- Success Of The Cleanup Efforts
- Need To Continue The Cleanup Efforts
- Increased Program Development
- Adequacy of Cost Data

State/Territory Cleanup Efforts Have Been Successful

States/Territories have completed 2,689 sites through the remedial construction completion phase, i.e., remedial action. These sites have had their risk to public health and the environment addressed. In addition, 3,527 removal sites have had actions completed to address immediate risks. Thus, over 6,000 sites across the country have been either fully remediated or had their immediate environmental concerns addressed.

Also, no further action determinations have been made at 5,828 sites based on a PA/SI or RI. The finding of no further action by a State or Territory provides the public with an assurance that these sites were not seriously contaminated and can be utilized for most purposes and, therefore, returned to productive use.

There Is A Need To Continue The State/Territory Efforts

States/Territories, on December 31, 1992, were working on 6,250 removal sites and 11,000 remedial sites. This active caseload was nearly twice the number of completed removals and four times the completed remedial actions for the previous thirteen years.

State/Territorial resources will continue to be needed to address this universe of contaminated sites for many years to come. Of the 9,662 active remedial sites which reported the last completed remedial phase, 40% (3,887 sites) had completed a PA or SI, 50% (4,834 sites) had completed an RI or FS, almost 6% had finished an RD and almost 4% had completed an RA but had other work to complete on the site. Therefore, a large number of sites will be moving into the RD and RA phases.

State/Territory Programs Have Continued To Develop

State/Territorial cleanup programs have greatly increased in their capacity to address contaminated sites. This was evidenced by the number of project starts and completions for the periods 1980-1986 and 1987-1992:

- **2**,685 (32%) starts for 1980-1986
- 5,699 (68%) starts for 1987-1992
- 1,099 (16%) completions for 1980-1986
- 5,648 (84%) completions for 1987-1992.

These data show that States/Territories have recognized the problems associated with contaminated sites and have developed the program capacity to deal with the problems faced by their individual States. It will be required that State/Territorial programs continue to address sites well into the future.

There Is A Need To Collect More Detailed Cost Data

Less than 15% of the sites reported cost data. Only one State reported cost for all its sites and 10 of the participating States/Territories reported no costs at all. In addition, some of the States that reported costs indicated that their costs were estimates, while others gave ranges (e.g. less than "X" thousand or between "X and Y" thousand).

States/Territories should attempt to improve their collection of cost data. Currently, all States track the expenditures of public funds, however, private party costs may not always be available to State program managers. A means to obtain this information should be pursued in order to obtain the full picture of costs, i.e., public and private dollars spent on site remediation in this country. Therefore, the State/Territory costs presented herein, should be viewed and analyzed within the limited arena in which the data has been collected.

Federal

The Federal data, like the State/Territory data, generate questions as well as some answers. The available answers, i.e., the conclusions, are presented within the following topics:

- Distribution of Predominant Remedies
- Impact of SARA.

Remedies Selected For Completed Removal and Remedial Actions Were Evenly Distributed Over the Various Predominant Remedies

Eighty-four percent of the predominant remedies used were evenly distributed between on-site containment, off-site treatment, off-site containment and site security, each with approximately one-fourth of the 84%.

By the end of 1992, Federal sites were beginning to use innovative technology as a predominant remedy. Such technologies have been used on 15 completed removal or remedial actions, seven of which were sites with remedial construction completions.

The 1986 Superfund Amendments and Reauthorization Act has had an Impact On The Federal Cleanup Efforts

Cleanup actions at both removal and remedial Federal sites prior to 1987 were 739 starts and 509 completions. From 1987 through 1992, starts totaled 1,184 and completions 1,305.

Reviewing the data another way, the 7-year period from 1980-1986 had 38% of the starts and the 6-year period from 1987-1992 had 62% of the starts or almost twice as many starts in one year less time.

APPENDIX A

STATE/TERRITORY DATA

APPENDIX A

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Connecticit	A-18
Delaware	A-20
Florida	A-22
Illinois	A-24
Indiana	A-26
Kansas	A-28
Louisiana	A-30
Maine	A-32
Maryland	A-34
Massachusetts	A-36
Michigan	A-38
Minnesota	A-40
Mississippi	A-42
Missouri	A-44
Montana	A-46
Nebraska	A-48
Nevada	A-50
New Jersey	A-52
New Mexico	A-54
North Carolina	A-56
Ohio	A-58
Oklahoma	
Oregon	
Pennsylvania	
Rhode Island	
South Carolina	

So	outh Dakota							0 6			٠							 e	 				 	A-70
Te	ennessee																		 				 	A-72
Te	exas										٠							 ٠	 				 	A-74
U	tah															 			 					A-76
V	irginia																		 					A-78
V	irgin Islands															 			 				 	*
W	ashington .															 			 				 	A-80
W	isconsin															 			 				 	A-82
State	Territory 1	Na	tio	na	l)at	a	Sı	un	nn	na	ıry	7 .			 			 	 				A-84

^{*} The Virgin Islands, although willing to participate, does not have data to present at this time.

INTRODUCTION

STATE/TERRITORY DATA

This chapter contains presentations for 39 States and one Territory. Another Territory, the Virgin Islands, elected to participate; however, at this time, it does not have any Territorial enforcement program or other vehicle to handle non-NPL hazardous waste cleanup efforts. As a result, the U.S. Environmental Protection Agency has taken the lead, handling all stages of any required cleanup efforts.

Connecticut, although participating, submitted summary data that did not have detailed support. Therefore, its data sheets and all subsequent presentations for Connecticut is based upon that summary data. To maintain the integrity of the database, Connecticut is not included in the national totals.

California has submitted detailed data on 850 sites; however, California has stated that it has many more sites for which it was unable to provide the requested data in the time allotted for this project. The 850 detailed sites submitted by California are in the database.

Alaska has provided detailed information on 41 sites and these sites are in the database. Alaska has also identified another 400 sites. These sites, however, do not have any direct parameter data like site status, predominant remedy or cost and, therefore, are not in the database.

Similarly, Texas has provided detail information on 200 sites and these sites are in the database. Texas has also stated that another 1900 sites have been referred by the Federal government and they are currently under eligibility review. Approximately another 100 sites, abandoned industrial disposal sites and state emergency removals, have been completed from the early-1980's through 1992. These latter sites are not in the database because the time constraints of the study did not permit the gathering of the necessary information fir acceptance by the database.

For the 39 States and the one Territory that submitted data, it is presented in three forms: a written profile of the data, a raw data display and a graphic data display. Preceding the State/Territory presentations is a summary table depicting selected data elements for each State/Territory. Following the 40 presentations is the State/Territory National Data Summary. This is a summary, on the national level, of all the data in the database. It is presented in the format of profile, raw data and graphic data. Note that Connecticut is not in this Summary since its data is not in the database.

State/Territory—Selected Data

State	Total Sites	Removal Ongoing	Removal Complete	Fame duel Active	NFA	Remed at Complete	(Sites/Days)	State Average (Sites/S)	(Sites/S)
Alabama	69	31	38	1	7	0	44/186	26/\$7,307	0/\$0.00
Alaska	41	4	11	11	8	6	33/248	38/\$95,160	3/\$9,899
American Samoa	3	3	0	2	1	1	1/62	0/\$0.00	0/\$0.00
Arizona	76	8	33	34	40	40	30/403	54/\$231,928	7/\$2,802,227
California	850	20	152	213	600	149	0/0	223/\$407,141	0/\$0.00
Colorado	11	4	5	5	0	0	3/93	1/\$3,200,000	0/\$0.00
Connecticut	642	0	0	551	91	91	0/0	0/\$0.00	0/\$0.00
Delaware	185	10	1	84	31	D	0/0	18/\$69,750	0/\$0.00
Florida	36	15	21	13	23	21	24/992	25/\$487,393	0/\$0.00
Ilinois	906	553	207	651	189	187	209/1,891	375/\$167,227	138/\$461,948
ndiana	79	27	18	25	2	2	15/372	10/\$168,112	1/\$1,000
Cansas	183	62	5	179	3	2	0/0	2/\$83,500	14/\$2,349,000
Louisiana	101	5	5	69	21	21	23/930	24/\$41,061	0/\$0.00
Maine	70	10	25	51	12	9	34/1,674	29/\$89,741	2/\$367,500
Maryland	378	4	26	166	212	1	40/186	8/\$77,468	6/\$236,177
Massachusetts	3,089	2,669	420	2,553	536	379	391/558	33/\$77,389	0/\$0.00
Michigan	2,662	1,584	343	1,584	1,078	343	0/0	496/\$321,021	0/\$0.00
Minnesota	414	11	31	293	108	53	80/558	89/\$127,561	89/\$912,044
Mississippi	110	0	17	89	16	8	24/961	0/\$0.00	0/\$0.00
Missouri	44	0	23	11	10	10	34/635	3/\$42,666	5/\$2,218,000
Montana	214	`27	26	169	7	4	0/0	3/\$253,333	1/\$250,000
Nebraska	15	0	0	15	0	0	0/0	0/\$0.00	0/\$0.00
Nevada	34	Ö	0	24	10	9	7/465	0/\$0.00	0/\$0.00
New Jersey	5,996	798	1,030	1,374	4,621	948	4,440/279	32/\$974,329	1,083/\$288,565
New Mexico	58	1	7	49	1	D	7/155	2/\$67,500	1/\$5,000,000
New York	556	33	231	442	112	27	111/465	210/\$1,006,030	0/\$0.00
North Carolina	873	2	0	646	225	8	0/0	0/\$0.00	0/\$0.00
Ohio	86	29	8	60	2	2	0/0	0/\$0.00	0/\$0.00
Okiahoma	40	0	32	4	4	4	7/651	29/\$2,951	0/\$0.00
Oregon	307	9	16	205	49	8	21/465	0/\$0.00	0/\$0.00
Pennsylvania	41	13	24	9	0	0	25/248	26/\$304,615	1/\$200,000
Rhodelsland	29	1	82	13	1	1	10/403	0/\$0.00	0/\$0.00
South Carolina	42	3	16	19	5	4	18/155	35/\$201,034	0/\$0.00
South Dakota	674	242	372	60	19	19	212/744	0/\$0.00	0/\$0.00
Tennessee	244	0	40	198	7	4	43/279	43/\$51,175	29/\$155,827
Texas	200	39	15	151	10	10	2/217	13/\$701,076	3/\$2,783,333
Utah	31	1	6	24	1	0	10/195	4/\$32,597	2/\$7,000,000
Virginia	21	20	0	0	1	1	0/0	2/\$1,250,000	0/\$0.00
Washington	1,220	27	19	171	210	134	28/362	131/\$83,544	0/\$0.00
Wisconsin	1,849	0	222	1,352	275	275	126/465	183/\$5,131	0/\$0.00
Totals	22.547	6.265	3.527	11.551	8,608	2.780	6.052/14.454	2 167/\$299 954	1.3B5/\$401.105

State/Territory—Alabama

Alabama reported 69 sites; 61 of the sites had only Removal actions and 8 of the sites had both Removal and Remedial actions. There were no sites with only Remedial actions. Thirty-five of the sites with only Removal actions were designated Complete (i.e., the Removal actions were Complete). Three of the sites with both Removal and Remedial actions had all Remedial actions Complete and had all Remedial actions designated as requiring No Further Action.

The Predominant Remedy most reported was Off-Site Treatment with 37 occurrences.

State cost was reported as \$190,000 for 26 sites for an average of \$7,308 per site. The range of cost was from \$2,000 to \$2,000 per site. For 25 sites with only Removal actions, and with these actions Complete, the average cost was \$7,200 per site.

A Primary Funding source was reported for 53 sites, with the State as the source for 32 of the sites.

The average **Duration of Response Actions** for 44 sites with reported start and completion dates was 6 months.

Alabama has a hazardous substance cleanup fund that was enacted in 1988 with enforcement, liability, and cost recovery provisions.

Data Display (Total Sites =	69)	
Removal	69	100.00%
Ongoing	31	44 93%
Complete	38	55.07%
Remedial	8	100.00%
Active	1	12.50%
No Further Action	7	87.50%
No Remedial Action Based on PA/SI or RI	7	100.00%
All Remedial Action Complete Except Operations/Maint.	0	0 00%
All Remedial Action Complete	0	0.00%
Last Remedial Phase	1	100.00%
PA/SI	0	0.00%
RI/FS	0	0.00%
RD	1	100.00%
RA	0	0 00%
Predominant Remedies	41	100.00%
On-Site Treatment	2	4.88%
On-Site Containment	1	2.44%
Off-Site Containment	0	0.00%
Off-Site Treatment	37	90.24%
Population Protection	0	0.00%
Site Security	1	2.44% 0.00%
Innovative Technology	U	
Total Cost		\$190,000.00
State Sites: 26 State Average: \$7,307.69		\$190,000.00
Sites: 26 State Average: \$7,307.69 PRP		\$0.00
Sites: 0 PRP Average: \$0.00		\$0.00
Primary Funding	53	100.00%
State	32	60.38%
Federal Government	2	3.77%
Enforcement	4	7.55%
Voluntary/Property Transfer	15	28.30%
Duration of Response Actions	44	100.00%
Less Than 12 Months	35	79.55%
12-23 Months	9	20.45%
24–35 Months	0	0.00%
36–47 Months	0	0.00%
48–59 Months	0	0.00%

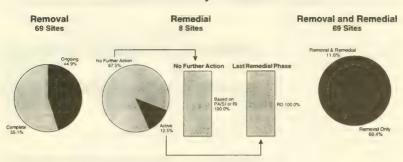
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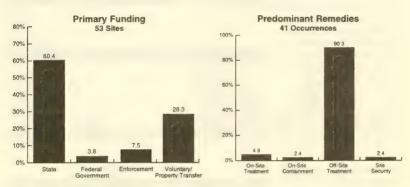
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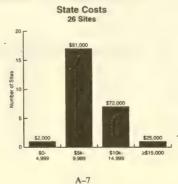
60-71 Months

More Than 71 Months

State/Territory—Alabama







State/Territory—Alaska

Alaska identified more than 450 sites and reported detailed information for 41 sites. Two of these 41 sites were both Removal and Remedial actions, 13 were sites with only Removal actions, and 17 were sites with only Remedial actions. The 2 sites with both Removal and Remedial actions reported those actions as complete and Remedial actions were Complete and Remedial actions required No Further Action). Nine of the sites with only Removal actions reported those actions as Complete, and 6 of the sites with only Remedial Actions reported those actions as requiring No Further Action.

The prevalent Last Remedial Phase was PA/SI with 11 of the 20 sites that reported a Last Remedial Phase. The prevalent Predominant Remedies were On-Site Treatment with 18 occurrences and Off-Site Treatment with 15 occurrences.

RD

Total Cost was reported as \$3,645,801 for 41 sites. State cost was reported for 38 sites for a total of \$3,616,104, and PRP cost was reported for 3 sites for a total of \$29,697. State cost of \$37,754 was reported for the two sites with both Removal actions that were Complete and Remedial actions that required No Further Action. State cost of \$296,165 was also reported for 7 sites with only Removal actions where those actions were Complete, and State cost of \$765,183 was reported for 6 sites with only Remedial actions that required No Further Action.

The Primary Funding source was the State with 23 of the 28 sites that reported Primary Funding; Enforcement was reported for 4 sites and Voluntary/Property Transfer for one site.

The average Duration of Response Actions was 8 months and 7 days based on 33 sites reporting start and completion dates for Duration of Response Actions. The first site was started in 1988.

Removal	15	100.00%
Ongoing	4	26.67%
Complete	11	73.33%
Remedial	19	100.00%
Active	11	57.89%
No Further Action	8	42.11%
No Remedial Action Based on PA/SI or RI	2	25.00%
All Remedial Action Complete Except Operations/Maint.	3	37.50%
All Remedial Action Complete	3	37.50%
Last Remedial Phase	20	100.00%
PA/SI	11	55.00%
RI/FS	0	0.00%

Data Display (Total Sites = 41)

redominant Remedies	. 50	100.00%
On-Site Treatment	18	36.00%
On-Site Containment	7	14.00%
Off-Site Containment	4	8.00%
Off-Site Treatment	15	30.00%
Population Protection	3	6.00%
Site Security	3	6.00%
Innovative Technology	0	0.009

20.00%

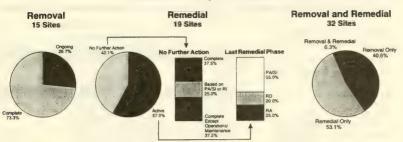
25.00%

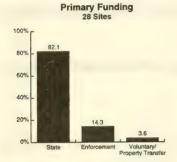
Total Cost		\$3.645,801.00
State		\$3,616,104.00
Sites: 38	State Average: \$95,160.63	
PRP		\$29,697.00
Sites: 3	PRP Average: \$9,899.00	
3105. 3	FRI Avelage. \$7,077.00	

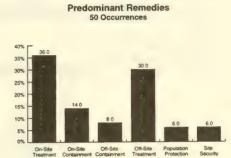
Primary Funding	28	100.00%
State	23	82.14%
Federal Government	0	0.00%
Enforcement	4	14.29%
Voluntary/Property Transfer	1	3.57%
Direction of Flancesco Actions	22	100.00%

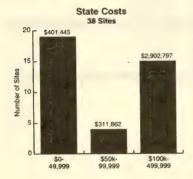
Duration of Response Actions	33	100.00%
Less Than 12 Months	28	84.85%
12-23 Months	4	12.12%
24-35 Months	1	3.03%
36-47 Months	0	0.00%
48-59 Months	0	0.00%
60-71 Months	Ü	0.00%
More Than 71 Months	0	0.00%

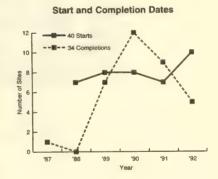
State/Territory—Alaska











State/Territory—American Samoa

American Samoa reported 3 sites, all of which had both Removal and Remedial actions.

The Last Remedial Phase for the 2 sites with Active Remedial actions was, respectively, PA/SI and RA. The Removal actions for all 3 sites were Ongoing.

The Predominant Remedies used for the 3 sites were On-Site Treatment, Off-Site Treatment, On-Site Containment, and Off-Site Containment.

The **Primary Funding** source was the **Federal Government**. All costs are unknown.

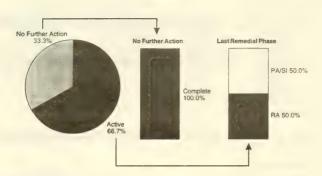
One site was started in 1988, and 2 sites were started in 1990. The one All Remedial Action Complete designation occurred in 1990.

Removal	3	100.00°。
Ongoing	3	100.00%
Complete	0	0.00%
Remedial .	3	100.00%
Active	2	66.67%
No Further Action	1	33.33%
1.01.000		
No Remedial Action Based on PA/SI or RI	0	0.00%
All Remedial Action Complete Except Operations/Maint.	0	0.00%
All Remedial Action Complete	1	100.00%
Last Remedial Phase	2	100.00%
PA/SI	1	50.00%
RI/FS	0	0.00%
RD	0	0.00%
RA	1	50.00%
Predominant Remedies	6	100.00%
On-Site Treatment	2	33.33%
On-Site Containment	2	33.33%
Off-Site Containment	1	16.67%
Off-Site Treatment	1	16.67%
Population Protection	0	0.00%
Site Security Innovative Technology	0	0.00%
innovative reciniology	U	0.00%
Total Cost	000	\$0.00
State		\$0.00
Sites: 0 State Average: \$0.00		
PRP		\$0.00
Sites: 0 PRP Average: \$0.00		
Primary Funding	3	100.00%
State	0	0.00%
Federal Government	3	100.00%
Enforcement	0	0.00%
Voluntary/Property Transfer	0	0.00%
Duration of Response Actions	1	100.00°。
Less Than 12 Months	1	100.00%
12-23 Months	0	0.00%
24–35 Months	Ö	0.00%
36–47 Months	0	0.00%
48-59 Months	0	0.00%
60-71 Months	0	0.00%
More Than 71 Months	0	0.00%

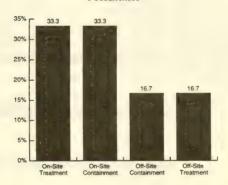
Data Display (Total Sites = 3)

State/Territory—American Samoa

Remedial 3 Sites



Predominant Remedies 6 Occurrences



State/Territory—Arizona

Arizona reported 76 sites. Forty-one of these sites had both Removal and Remedial actions, and 33 had only Remedial actions. There were no sites with only Removal actions.

Forty of the sites with Remedial actions were classified as construction completions.

State cost for 54 sites was \$12,524,140 for an average cost of \$231,929. The total PRP reported cost for 7 sites was \$19,615,593 for an average of \$2,802,228.

The most prevalent Predominant Remedy was On-Site Containment with 9 occurrences.

For sites with Remedial actions that were Active, the predominant Last Remedial Phase was the RIJFS (23 sites).

The first 2 sites were started in 1980, and an additional 10 sites were started in the period from 1980 through 1985. Twenty-two sites had **Duration of Response Actions of Less Than 12 Months.** The average **Duration of Response Actions** for 30 sites was 13 months and 25 days for the sites that reported start and completion dates.

Data Display (Total Sites = 76)			
Removal	41	100.00%	
Ongoing Complete	8 33	19.51% 80.49%	
Remedial	. 74	100.00%	
Active	34	45.95%	
No Further Action	40	54.05%	
No Remedial Action Based on PA/SI or RI	0	0.00%	
All Remedial Action Complete Except Operations/Maint.	7	17.50%	
All Remedial Action Complete	33	82.50%	
Last Remedial Phase	31	100.00%	
PA/SI	2	6.45%	
RI/FS	23	74.19%	
RD	3	9.68%	
RA	3	9.68%	
Predominant Remedies	27	100.00%	
On-Site Treatment	7	25.93%	
On-Site Containment	9	33.33%	
Off-Site Containment	4	14.81%	
Off-Site Treatment	1	3.70%	
Population Protection Site Security	6	0.00%	
Innovative Technology	0	0.00%	
Total Cost	S32	,139,733.00	
State	\$12	.524.140.00	
Sites: 54 State Average: \$231,928.52	4.2	152 111 10100	
PRP	\$19	,615,593.00	
Sites: 7 PRP Average: \$2,802,227.57			
Primary Funding	74	100.00%	
Ctota	54	72 97%	

B

18

0.00%

2.70%

24.33%

73.33%

3.33%

6.67%

6.67%

3.33%

6.67%

0.00%

Federal Government

Voluntary/Property Transfer

Duration of Response Actions Less Than 12 Months

Enforcement

12-23 Months

24-35 Months

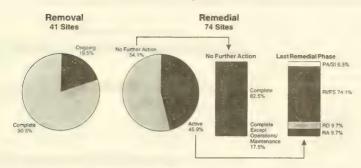
36-47 Months

48-59 Months

60-71 Months

More Than 71 Months

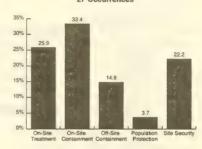
State/Territory—Arizona



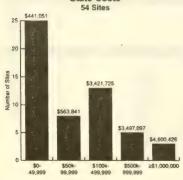
Removal and Remedial 74 Sites



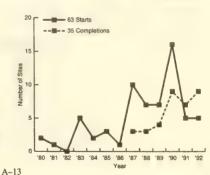
Predominant Remedies 27 Occurrences



State Costs



Start and Completion Dates



Ongoing

Complete

State/Territory—California

California stated that it had nearly 2,000 sites. The detailed information provided was for 850 sites. One hundred thirty-eight of the sites had both Removal and Remedial actions, 34 had only Removal actions, and 675 had only Remedial actions.

Twenty-nine of the 138 sites that had both Removal and Remedial actions had Removal actions that were Complete and the Remedial actions that required No Further Action. For 14 of the 34 sites that had only Removal actions, the actions were Complete. For 571 of the 675 sites that had only Remedial actions, the actions required No Further Action.

The Predominant Remedy was Site Security, which was reported for all 28 Predominant Remedy occurrences.

For the 223 sites that reported State cost, the total was \$90,792,505 with a per site average of \$407,141. The reported cost for 13 sites with only Removal actions that were Complete was \$2,849,366. The reported cost for 80 sites with only Remedial actions designated as requiring No Further Action was \$10,908,703. The respective average of each was \$219,182 and \$136,359.

Enforcement was the Primary Funding source at 113 sites, followed by the State at 32 sites, the Federal Government at 14 sites and Voluntary/Property Transfer at 3 sites.

- 1	172	100
	20	13
	152	88

Remedial	813	100.00%
Active	213	26.20%
No Further Action	600	73.80%
No Remedial Action Based on PA/SI or RI	451	75.17%
All Remedial Action Complete Except Operations/Maint.	24	4.00%
All Remedial Action Complete	125	20.83%

Data Display (Total Sites = 850)

Last Remedial Phase	95	100.00%
PA/SI	45	47.37%
RI/FS	32	33.68%
RD	13	13.68%
RA	5	5.26%

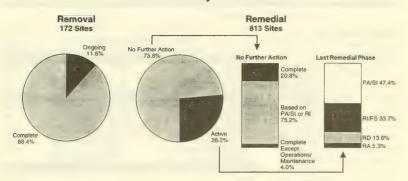
Predominant Remedies	28	100.00%
On-Site Treatment	0	0.00%
On-Site Containment	0	0.00%
Off-Site Containment	0	0.00%
Off-Site Treatment	i0	0.00%
Population Protection	0	0.00%
Site Security	28	100.00%
Innovative Technology	0	0.00%

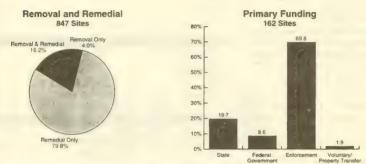
Total Cost		\$90,792,505.00
State		\$90,792,505.00
Sites: 223	State Average: \$407,141.28	
PRP		\$0.00
Sites: 0	PRP Average: \$0.00	

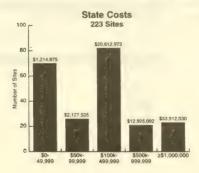
162	100.00%
32	19.75%
14	8.65%
113	69.75%
3	1.85%
	32 14

Duration of Response Actions	0	100.00%
Less Than 12 Months	0	0.00%
12-23 Months	0	0.00%
24–35 Months	Ö	0.00%
36-47 Months	Ü	0.00%
48-59 Months	0	0.00%
60-71 Months	Ü	0.00%
More Than 71 Months	0	0.00%

State/Territory—California







A-15

State/Territory—Colorado

Colorado reported 11 sites; 6 were sites with only Removal actions, 2 were sites with only Remedial actions, and 3 were sites with both Removal and Remedial actions. All of the sites with only Remedial actions were classified as Active. All of the sites with only Removal actions were classified Complete. The 3 sites with both Removal and Remedial actions had Removal actions that were Ongoing and had Remedial actions that were Active.

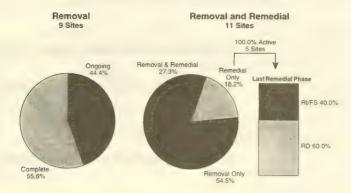
State cost of \$3,200,000 was reported for only one site with Active Remedial actions. The PRP cost for this site was reported as Unknown.

Eight sites were started after 1986, and five sites were completed in the 2year period of 1991 through 1992. The average Duration of Response Actions from start to completion is 3 months and 10 days based on 3 sites.

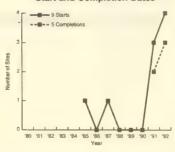
Colorado does not maintain a database to track cleanup activities, and a thorough review of the files in each of the agencies that perform or require cleanup was not done for this survey because of the large amount of time and effort that it would have required. Therefore, this data significantly underestimates the number of Remedial and Removal activities that have been performed.

Data Display (Total Sites = 1	11)	
Removal	9	100.00%
Ongoing	4	44,44%
Complete	5	55.56%
Remedial	5	100.00%
Active	5	100.00%
No Further Action	0	0.00%
No Remedial Action Based on PA/SI or RI	0	0.00%
All Remedial Action Complete Except Operations/Maint.	0	0.00%
All Remedial Action Complete	0	0.00%
Last Remedial Phase	5	100.00%
PA/SI	0	0.00%
RI/FS	2	40.00%
RD	3	60.00%
RA	0	0.00%
Predominant Remedies	12	100.00%
On-Site Treatment	4	33.33%
On-Site Containment	2	16.67%
Off-Site Containment	2	16.67%
Off-Site Treatment	0	0.00%
Population Protection	1	8.33%
Site Security	1 2	8.33% 16.67%
Innovative Technology		
Total Cost		,200,000.00
State	\$3	,200,000.00
Sites: 1 State Average: \$3,200,000.00		\$0.00
PRP Sites: 0 PRP Average: \$0.00		30.00
Sites: 0 PRP Average: \$0.00		
Primary Funding	2	100.00%
State	0	0.00%
Federal Government	0 2	0.00%
Enforcement Transfer	0	0.00%
- Voluntary/Property Transfer		
Duration of Response Actions	3	100.00%
Less Than 12 Months	3	100.00%
12-23 Months	0	0.00%
24–35 Months	0	0.00%
36–47 Months 48–59 Months	0	0.00%
48–39 Months 60–71 Months	0	0.00%
More Than 71 Months	0	0.00%

State/Territory—Colorado



Start and Completion Dates



A-17

State/Territory—Connecticut

Connecticut reported 642 sites. All of the sites had only Remedial actions, of which 91 required No Further Action. For the sites that had Active actions, 551 reported a Last Remedial Phase with PA/SI being the most prevalent with 375 sites. In addition, there were 20 sites in the Last Remedial Phase of RD/RA and 156 sites in the Last Remedial Phase of RJ/FS.

A Primary Funding source was reported at 242 sites, with Voluntary/Property Transfer being reported for 161 of those sites.

From 1980 to 1986, the Connecticut Department of Environmental Protection investigated approximately 5,700 potential sites. Of these, 567 were found to be hazardous waste disposal sites requiring Remedial action; the remaining 5,133 were classified as sites requiring No Further Action. The sites requiring action were placed on the Dynamic Inventory of Hazardous Waste Disposal Sites (Inventory).

The State Superfund Law was adopted in 1987 with 567 hazardous waste disposal sites listed. Since that time, 75 additional sites have been added to the Inventory. Because Connecticut screens sites prior to listing on the Inventory, very few of the sites that are Active are likely to be classified as sites requiring No Further Action prior to implementation of Remedial measures.

As of December 1992, 63 sites had been fully remediated, and 28 sites were in the post-remediation monitoring phase. The **Predominant Remedy** reported was **Off-Site Treatment**.

Connecticut's remedial programs include the Property Transfer Program (1985), State Superfund Program (1987), both enforcement-driven and State-funded actions, and the Urban Sites Remedial Action Program. Connecticut did not provide data in sufficient detail that could be input to the database; therefore, the data presented herein is not a part of the State/Territory database.

Data Display (Total Sites = 642)

Ongoing	0	0.00%
Complete	0	0.00%
Remedial	642	100.00%
Active	551	85.80%
No Further Action	91	14.20%
No Remedial Action Based on PA/SI or RI	0	0.00%
All Remedial Action Complete Except Operations/Maint.	28	30.80%
All Remedial Action Complete	63	69.20%
Last Remedial Phase	551	100.00%
PA/SI	375	68.06%
RL/FS	156	28.31%
RD/RA	20	3.63%

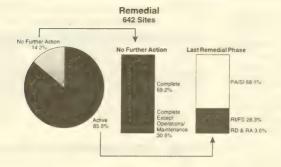
1 redominant ricinedies		0.0078
On-Site Treatment	0	0.00%
On-Site Containment	0	0.00%
Off-Site Containment	0	0.00%
Off-Site Treatment	0	0.00%
Population Protection	0	0.00%
Site Security	0	0.00%
Innovative Technology	0	0.00%

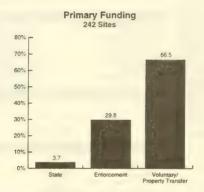
Total Cost		\$0.00
State		\$0.00
Sites: 0	State Average: \$0.00	
PRP		\$0.00
Sites: 0	PRP Average: \$0.00	

Primary Funding	242	100.00%
State	9	3.70%
Federal Government	0	0.00%
Enforcement	72	29.80%
Voluntary/Property Transfer	161	66.50%

Duration of Response Actions	0	100.00%
Less Than 12 Months	0	0.00%
12-23 Months	0	0.00%
24-35 Months	0	0.00%
36-47 Months	Ü	0.00%
48-59 Months	0	0.00%
60-71 Months	0	0.00%
More Than 71 Months	0	0.00%

State/Territory—Connecticut





State/Territory—Delaware

A

Delaware reported 185 sites. One of the sites had both Removal and Remedial actions. Ten sites had only Removal actions. One hundred seventy-four sites had only Remedial actions. The site with both Removal and Remedial actions was composed of Removal actions that were Complete and Remedial actions that were Active. The Last Remedial Phase of these actions was RI/FS. The 10 sites with only Removal actions were all in an Ongoing status. The 83 sites with only Remedial actions were all in the Active status. The remaining 91 sites required No Remedial Action Based on PA/SI

The most prevalent Last Remedial Phase was PA/SI with 78 of the 84 sites that reported a Last Remedial Phase.

A total of \$1,255,500 was reported for 18 sites, all of which was **State** cost. All **PRP** cost was reported as unknown.

The Federal Government was reported as the Primary Funding source with 91 sites, followed by Enforcement with 75 sites and the State with 17 sites. Voluntary\Property Transfer was reported for 2 sites.

Five sites were started in the 2-year period from 1991 through 1992. Delaware also stated that 91 sites have a completion time frame of less than 24 months but that specific start and completion dates for these sites were not available in time to meet the submission time frame of the survey.

Delaware has a Hazardous Substance Cleanup Act "to accomplish effective and expeditious cleanups to protect the public health or welfare, or the environment."

Removal	. 11	100.00%
Ongoing	10	90.91%
Complete	1	9.09%
Remedial	175	100.00%
Active	84	48.00%
	0.1	50.005

Data Display (Total Sites = 185)

Remedial	175	100.00%
Active	84	48.00%
No Further Action	91	52.00%
No Remedial Action Based on PA/SI or RI	91	100.00%
All Remedial Action Complete Except Operations/Maint.	0	0.00%
All Remedial Action Complete	0	0.00%

Last Remedial Phase	84	100.00%
PA/SI	78	92.86%
RI/FS	5	5.95%
RD	1	1.19%
RA	0	0.00%

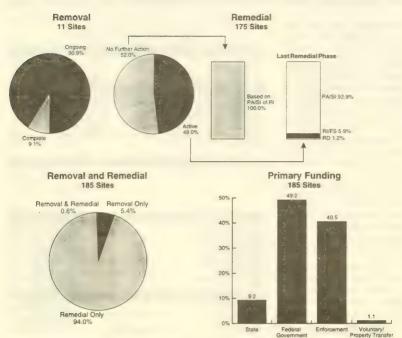
Predominant Remedies		100.00%
On-Site Treatment	0	0.00%
On-Site Containment	0	0.00%
Off-Site Containment	0	0.00%
Off-Site Treatment	0	0.00%
Population Protection	0	0.00%
Site Security	0	0.00%
Innovative Technology	0	0.00%

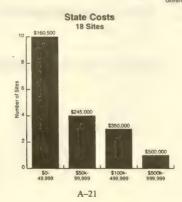
Total Cost		\$1.255,500.00
State		\$1,255,000.00
Sites: 18 PRP	State Average: \$69,750.00	\$0.00
Sites: 0	PRP Average: \$0.00	

Primary Funding	185	100.00%
State	17	9.19%
Federal Government	91	49.19%
Enforcement	75	40.54%
Voluntary/Property Transfer	2	1.08%
Duration of Response Actions	0	100.00%

Duration of Response Actions	0	100.00%
Less Than 12 Months	Ō	0.00%
12-23 Months	Ü	0.00%
24–35 Months	0	0.00%
36-47 Months	0	0.00%
48-59 Months	0	0.00%
60-71 Months	0	0.00%
More Than 71 Months	0	0.00%

State/Territory—Delaware





State/Territory—Florida

Florida reported 36 sites. All of these sites had both Removal and Remedial actions. At 21 of the sites the Removal actions were designated Complete and the Remedial actions required No Further Action. The Predominant Remedies reported were On-Site Treatment with 18 occurrences and Off-Site Containment with 16 occurrences. In all, 40 Predominant Remedies were reported.

A Primary Funding source was reported for 36 sites: the State with 35 sites and the Federal Government with 1 site.

Twenty-five sites had State cost, which totaled \$12,184,849 for a per site average of \$487,394. The 21 sites with both the Removal actions Complete and the Remedial actions requiring No Further Action reported cost that totaled \$9,239,633 for a per site average of \$439,983.

The first cleanup effort was in 1983 and was completed within 1 month. The last completion occurred in 1992. The range from start to completion encompassed from 1 to 83 months, with the average **Duration of Response Actions** having been 32 months.

The data presented herein does not include sites in Florida's Enforcement Program.

Data Display (Total Sites = 3	36)	
Removal	36	100.00%
Ongoing	15	41.67%
Complete	21	58.33%
Remedial	36	100.00%
Active	13	36.11%
No Further Action	23	63.89%
No Remedial Action Based on PA/SI or RI	2	8.70%
All Remedial Action Complete Except Operations/Maint.	6	26.09%
All Remedial Action Complete	15	65.22%
Last Remedial Phase	15	100.00%
PA/SI	- 1	6.67%
RI/FS	4	26.67%
RD	8	53.33%
RA	2	13.33%
	_	400 000/
Predominant Remedies	40	100.00%
On-Site Treatment	18	45.00%
On-Site Treatment On-Site Containment	18	45.00% 0.00%
On-Site Treatment On-Site Containment Off-Site Containment	18 0 16	45.00% 0.00% 40.00%
On-Site Treatment On-Site Containment Off-Site Containment Off-Site Treatment	18 0 16 3	45.00% 0.00% 40.00% 7.50%
On-Site Treatment On-Site Containment Off-Site Containment Off-Site Treatment Population Protection	18 0 16 3	45.00% 0.00% 40.00% 7.50% 2.50%
On-Site Treatment On-Site Containment Off-Site Containment Off-Site Treatment	18 0 16 3	45.00% 0.00% 40.00% 7.50%
On-Site Treatment On-Site Containment Off-Site Containment Off-Site Treatment Population Protection Site Security	18 0 16 3 1 1	45.00% 0.00% 40.00% 7.50% 2.50% 2.50%
On-Site Treatment On-Site Containment Off-Site Containment Off-Site Treatment Population Protection Site Security Innovative Technology	18 0 16 3 1 1	45.00% 0.00% 40.00% 7.50% 2.50% 2.50%
On-Site Treatment On-Site Containment Off-Site Containment Off-Site Treatment Population Protection Site Security Innovative Technology Total Cost	18 0 16 3 1 1	45.00% 0.00% 40.00% 7.50% 2.50% 2.50% 2.50%
On-Site Treatment On-Site Containment Off-Site Containment Off-Site Treatment Population Protection Site Security Innovative Technology Total Cost State Sites: 25 State Average: \$487,393.96 FRP	18 0 16 3 1 1	45.00% 0.00% 40.00% 7.50% 2.50% 2.50% 2.50%
On-Site Treatment On-Site Containment Off-Site Containment Off-Site Treatment Population Protection Site Security Innovative Technology Total Cost State Sites: 25 State Average: \$487,393.96	18 0 16 3 1 1	45.00% 0.00% 40.00% 7.50% 2.50% 2.50% 2.50% 1.184,849.00
On-Site Treatment On-Site Containment Off-Site Containment Off-Site Treatment Population Protection Site Security Innovative Technology Total Cost State Sites: 25 State Average: \$487,393.96 FRP	18 0 16 3 1 1 1 512 \$12	45.00% 0.00% 40.00% 7.50% 2.50% 2.50% 2.50% 2.50% 184,849.00 \$0.00
On-Site Treatment On-Site Containment Off-Site Containment Off-Site Treatment Population Protection Site Security Innovative Technology Total Cost State Sites: 25 State Average: \$487,393.96 PRP Sites: 0 PRP Average: \$0.00 Primary Funding State	18 0 16 3 1 1 1 1 512 \$12	45.00% 0.00% 40.00% 7.50% 2.50% 2.50% 2.50% 2.50% 184,849.00 \$0.00
On-Site Treatment On-Site Containment Off-Site Containment Off-Site Treatment Population Protection Site Security Innovative Technology Total Cost State Sites: 25 State Average: \$487,393.96 FRP Sites: 0 PRP Average: \$0.00 Primary Funding State Federal Government	18 0 16 3 1 1 1 1 1 1 1 3 3 1 1 1 1 1 3 3 1	45.00% 0.00% 40.00% 7.50% 2.50
On-Site Treatment On-Site Containment Off-Site Containment Off-Site Treatment Population Protection Site Security Innovative Technology Total Cost State Sites: 25 State Average: \$487,393.96 FRP Sites: 0 PRP Average: \$0.00 Primary Funding State Federal Government Enforcement	18 0 16 3 1 1 1 1 512 \$12	45.00% 0.00% 40.00% 7.50% 2.50% 2.50% 2.50% 2.50% 1.84,849.00 \$0.00 \$0.00 97.22% 2.78% 0.00%
On-Site Treatment On-Site Containment Off-Site Containment Off-Site Treatment Population Protection Site Security Innovative Technology Total Cost State Sites: 25 State Average: \$487,393.96 FRP Sites: 0 PRP Average: \$0.00 Primary Funding State Federal Government	18 0 16 3 1 1 1 1 1 1 1 3 3 1 1 1 1 1 3 3 1	45.00% 0.00% 40.00% 7.50% 2.50
On-Site Treatment On-Site Containment Off-Site Containment Off-Site Treatment Population Protection Site Security Innovative Technology Total Cost State Sites: 25 State Average: \$487,393.96 FRP Sites: 0 PRP Average: \$0.00 Primary Funding State Federal Government Enforcement	18 0 16 3 1 1 1 1 512 \$12	45.00% 0.00% 40.00% 7.50% 2.50% 2.50% 2.50% 2.50% 1.84,849.00 \$0.00 \$0.00 97.22% 2.78% 0.00%

29.17%

12.50%

4.17%

4.17%

8.32%

16.67%

12-23 Months 24-35 Months

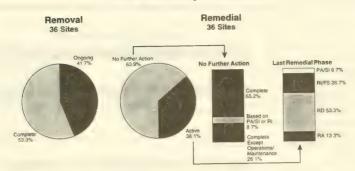
36-47 Months

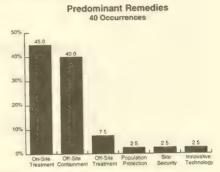
48-59 Months

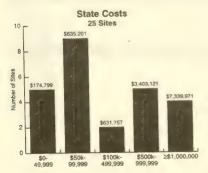
60-71 Months

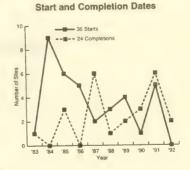
More Than 71 Months

State/Territory—Florida









A-23

State/Territory—Illinois

Illinois reported 906 sites; 737 of the sites had both Removal and Remedial actions, 23 of the sites had only Removal actions, and 103 of the sites had only Remedial actions. Of the 840 total Remedial actions reported, 651 were designated as Active with RJ/FS as the Last Remedial Phase for 571 of those Active actions. The prevalent Predominant Remedy was Off-Site Containment with 189 occurrences of the 244 Predominant Remedy occurrences reported.

The Total Cost was \$126,459,118, with the State cost being \$62,710,274 for 375 sites and PRP cost being \$63,748,844 for 138 sites. The average per site PRP cost was \$461,948, which was \$294,721 greater than the per site average for State cost of \$167,227.

A Primary Funding source was reported for 863 of the 906 sites reporting Primary Funding. Voluntary/Property Transfer accounted for 613 of the sites which reported a Primary Funding source, followed by the State with 137.

The average **Duration of Response Actions** is 61 months and 21 days based on 209 sites reporting start and completion dates for response actions.

Data Display (Total Sites = 906)

Removal	760	100.00%
Ongoing	553	72.76%
Complete	207	27.24%
Remedial	840	100.00%
Active	651	77.50%
No Further Action	189	22.50%
No Remedial Action Based on PA/SI or RI	2	1.06%
All Remedial Action Complete Except Operations/Maint.	11	5.82%
All Remedial Action Complete	176	93.12%

Last Remedial Phase	593	100.00%
PA/SI	1	0.17%
RI/FS	571	96.28%
RD	18	3.04%
RA	3	0.51%

Predominant Remedies	244	100.00%
On-Site Treatment	25	10.25%
On-Site Containment	15	6.15%
Off-Site Containment	189	77.45%
Off-Site Treatment	7	2.87%
Population Protection	4	1.64%
Site Security	3	1.23%
Innovative Technology	1	0.41%

Total Cost		\$126,459,118.00
State		\$62,710,274.00
Sites: 375	State Average: \$167,227.40	
PRP		\$63,748,844.00
Sites: 138	PRP Average: \$461,948.14	

Primary Funding	863	100.00%
State	137	15.87%
Federal Government	18	2.09%
Enforcement	95	11.01%
Voluntary/Property Transfer	613	71.03%
Duration of Response Actions	209	100.00%
Less Than 12 Months	128	61.24%
12-23 Months	21	10.05%
24-35 Months	11	5.26%
36-47 Months	7	3.35%

3.83%

3.83%

12.44%

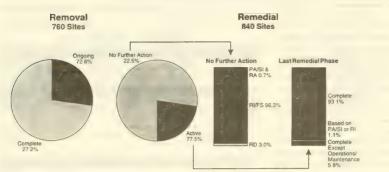
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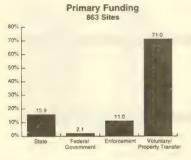
48-59 Months

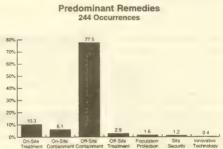
60-71 Months

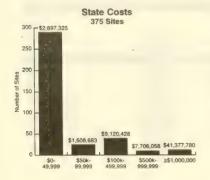
More Than 71 Months

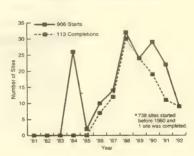
State/Territory—Illinois











Start and Completion Dates

State/Territory—Indiana

Indiana reported 79 sites; 4 were sites with both Removal and Remedial actions, 41 were sites with only Removal actions, 23 were sites with only Remedial actions, and 11 were reported without a status designation. These last sites were approved, but work did not begin as of December 31, 1992.

Of the 4 sites with both Removal and Remedial actions, 1 site had the Removal actions designated as Ongoing and the Remedial actions designated as Active. Twenty-one of the 23 sites with only Remedial actions had the actions designated as Active, and 26 of the sites with only Removal actions had the actions designated as Ongoing.

Six sites with only Removal actions that were Complete reported State cost of \$869,559 for a per site average of \$144,926. Total PRP cost of \$1,000 was reported for 1 site. Total State cost of \$1,681,128 was reported for 10 sites.

The Predominant Remedies were Off-Site Containment with 14 occurrences and Off-Site Treatment with 9

The first site was started in 1972. The average **Duration of Response Actions** for 15 sites reporting start and completion dates was 12 months and 15 days.

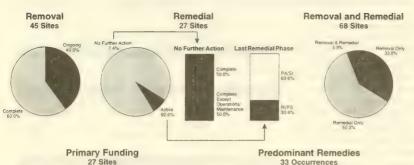
Data Display (Total Sites = 7	79)	
Removal	45	100.00°。
Ongoing	27	60.00%
Complete	18	40.00%
Remedial	27	100.00°
Active	25	92.59%
No Further Action	2	7.41%
No Remedial Action Based on PA/SI or RI	0	0.00%
All Remedial Action Complete Except Operations/Maint.	1	50.00%
All Remedial Action Complete	1	50.00%
Last Remedial Phase	23.	100.00%
	16	69.57%
PA/SI RI/FS	7	30.43%
RD RD	ó	0.00%
RA	0	0.00%

Predominant Remedies	33	100.00%
On-Site Treatment	2	6.06%
On-Site Containment	3	9.09%
Off-Site Containment	14	42.43%
Off-Site Treatment	9	27.27%
Population Protection	2	6.06%
Site Security	3	9.09%
Innovative Technology	0	0.00%
Total Cost		1.682.128.00
State	\$	1,681,128.00
Sites: 10 State Average: \$168,112.80		01 000 00
PRP Sites: 1 PRP Average: \$1,000.00		\$1,000.00
7100. 1 110 71 100.00		
Primary Funding	27	100.00°。
State	12	44.44%
Federal Government	0	0.00%
Enforcement	3	11.12%
Voluntary/Property Transfer	12	44.44%
Duration of Response Actions	15	100.00°。
Less Than 12 Months	10	66.67%
12-23 Months	2	13.33%
24-35 Months	1	6.67%
36–47 Months	2	13.33%
48-59 Months	0	0.00%
60–71 Months	0	0.00%

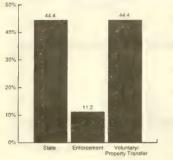
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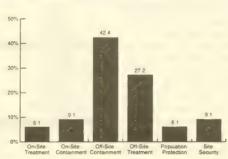
More Than 71 Months

State/Territory—Indiana



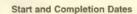
Predominant Remedies 33 Occurrences

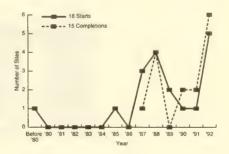




10 Sites \$1,614,433 Number of Sites

State Costs





State/Territory—Kansas

Kansas reported 183 sites. Sixty-six were sites with both Removal and Remedial actions, 1 was a site with only Removal actions and 116 were sites with only Remedial actions. Two of the 66 sites with both Removal and Remedial actions that were Complete and Removal actions that required No Further Action. The 1 site with only Removal actions designated the actions as Ongoing, and all but one of the 116 sites with only Remedial actions as Active.

Predominant Remedies had 106 reported occurrences. The most prevalent was On-Site Treatment with 81 of the 106 reported occurrences.

Total Cost of \$33,053,000 had been reported for 16 sites. State cost for 2 of the sites was \$167,000, and PRP cost for the other 14 sites was \$32,886,000.

Enforcement was the Primary Funding source for 96 sites, followed by Voluntary/Property Transfer for 45 sites, the Federal Government for 25 sites, and the State for 17 sites.

Seventeen sites were started prior to 1986, and 166 were started in the period 1986 through 1992.

Data Display (Total Sites = 1	83)	
Removal	67	100.00%
Ongoing	62	92.54%
Complete	5	7.46%
Remedial	182	100.00%
Active	179	98.35%
No Further Action	3	1.65%
No Remedial Action Based on PA/SI or RI	1	33.33%
All Remedial Action Complete Except Operations/Maint.	2	66.67%
All Remedial Action Complete	0	0.00%
Last Remedial Phase	179	100.00%
PA/SI	87	48.61%
RL/FS	42	23.46%
RD	21	11.73%
RA	29	16.20%
Predominant Remedies	106	100.00%
On-Site Treatment	81	76.42%
On-Site Containment	12	11.32%
Off-Site Containment	5	4.72%
Off-Site Treatment	0	0.00%
Population Protection	4	3.77% 0.94%
Site Security Innovative Technology	3	2.83%
Total Cost	\$33	3,053,000.00
State		\$167,000.00
Sites: 2 State Average: \$83,500.00		
PRP	\$32	2,886,000.00
Sites: 14 PRP Average: \$2,349,000.00		
Primary Funding	183	100.00%
State	17	9.29%
Federal Government	25	13.66%
Enforcement	96	52.46%
Voluntary/Property Transfer	45	24.59%
Duration of Response Actions	0	100.00%

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Less Than 12 Months

More Than 71 Months

12-23 Months

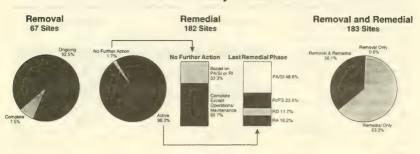
24-35 Months

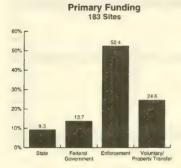
36-47 Months

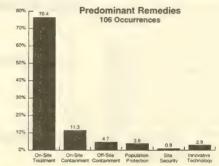
48-59 Months

60-71 Months

State/Territory—Kansas









State/Territory—Louisiana

Louisiana reported 101 sites. Ten of the sites had only Removal actions and 90 of the sites had only Remedial actions. None of the sites had both Removal and Remedial actions. Five of the 10 sites with only Removal actions designated those actions as Ongoing and 69 of the 90 of the sites with only Remedial actions designated those actions as Active. The prevalent Last Remedial Phase was PA/SI with 55 sites out of the 66 sites that reported a Last Remedial Phase.

The most prevalent Predominant Remedy was Off-Site Containment with 22 occurrences.

State cost was reported for 24 sites for a total of \$985,483 with an average of \$41,062 per site. For the 13 construction completion sites that reported cost, the average was \$6,489 per site.

Voluntary/Property Transfer accounted for 63 of the 93 sites with a Primary Funding source.

The average **Duration of Response Actions** for the 23 sites with start and completion dates was 30 months and 5 days, with a range from 1 month to 88 months.

Louisiana has environmental quality legislation, amended in 1992, which has regulations controlling hazardous waste actions within the State.

Data Display (Total Sites = 101)

Removal	10	100.00%
Ongoing	5	50.00%
Complete	5	50.00%
Remedial	90	100.00%
Active	69	76.67%
No Further Action	21	23.33%
No Remedial Action Based on PA/SI or RI	0	0.00%
All Remedial Action Complete Except Operations/Maint.	2	9.52%
All Remedial Action Complete	19	90.48%
	ee.	100.00%

Last Remedial Phase	66	100.00%
PA/SI	55	83.33%
RI/FS	10	15.15%
RD	1	1.52%
RA	0	0.00%

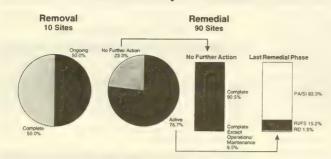
Predominant Remedies	. 41	100.00%
On-Site Treatment	4	9.76%
On-Site Containment	9	21.95%
Off-Site Containment	22	53.66%
Off-Site Treatment	3	7.32%
Population Protection	0	0.00%
Site Security	3	7.32%
Innovative Technology	0	0.00%

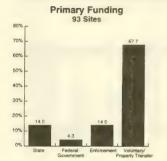
Total Cost		\$985,483.00
State		\$985,483.00
Sites: 24	State Average: \$41,061.79	
PRP		\$0.00
Sites: 0	PRP Average: \$0.00	

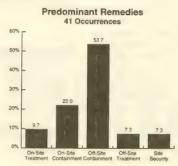
Primary Funding	93	100.00%
State	13	13.98%
Federal Government	4	4.30%
Enforcement	13	13.98%
Voluntary/Property Transfer	63	67.74%

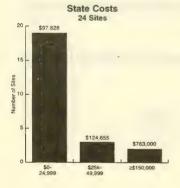
Duration of Response Actions	23	100.00°°
Less Than 12 Months	5	21.73%
12-23 Months	2	8.70%
24–35 Months	6	26.09%
36-47 Months	7	30.43%
48-59 Months	1	4.35%
60-71 Months	1	4.35%
More Than 71 Months	1	4.35%

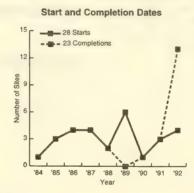
State/Territory—Louisiana











A-31

State/Territory—Maine

Maine reported 70 sites. Twenty-eight of the sites had both Removal and Remedial actions, 7 had only Removal actions. Two of the sites with both Removal and Remedial actions designated the Removal actions as Complete and the Remedial actions as requiring No Further Action. Six of the 7 sites with only Removal actions designated those actions as Complete and 9 of the 35 sites with only Remedial actions designated those actions as requiring No Further Action.

Seventeen of the sites with only Remedial actions that were Active had a Last Remedial Phase of PA/SI. Fourteen of the sites with both Removal actions that were Ongoing and Remedial actions that were Active also had a Last Remedial Phase of PA/SI.

The Predominant Remedies were Off-Site Treatment with 11 occurrences and On-Site Treatment with 10 occurrences.

The Total Cost for 29 sites was \$3,337,516, shared by State cost of \$2,602,516 for all 29 sites and PRP cost of \$735,000 at 2 of the 29 sites.

The average Duration of Response Actions was 54 months and 13 days based upon 34 sites reporting start and completion dates. Twelve sites had a Duration of Response Actions of Less Than 12 Months.

	Data Display (Total Sites = 70)				
Remo	ral		35	100.00%	
Ong	plete		10 25	28.57% 71.43%	
Reme	dial	_	63	100.00%	
Acti No I	ve further Action		51 12	80.95% 19.05%	
N	Remedial Action Base	ed on PA/SI or RI	3	25.00%	
	l Remedial Action Cor l Remedial Action Cor	nplete Except Operations/Maint. nplete	7 2	58.33% 16.67%	
Last R	emedial Phase	0	45	100.00%	
PA/S	I		32	71.12%	
RI/F	S		9	20.00%	
RD			2	4.44%	
RA			2	4.44%	
Predo	minant Remedies		47	100.00%	
On-S	ite Treatment		10	21.28%	
On-S	ite Containment		7	14.89%	
	Site Containment		8	17.03%	
	Site Treatment		11	23.40%	
	lation Protection		7	14.89%	
	Security vative Technology		4	8.51% 0.00%	
Inno	rative recimology		U	0.00%	
Total 0	cst		Si	337.516.00	
State	tes: 29	State Average: \$89,741.93	\$2	,602,516.00	
PRP			:	\$735,000.00	
Si	es: 2	PRP Average: \$367,500.00			
Primai	y Funding	٥	39	100.00%	
State			13	33.33%	
	ral Government		6	15.39%	
	rcement		7	17.95%	
	ntary/Property Transfe		13	33.33%	
	on of Response Action	ns	34	100.00%	
	Than 12 Months		12	35.29%	
12-2	3 Months		6	17.65%	

14.71%

14.71%

8.82%

2.94%

5.88%

24-35 Months

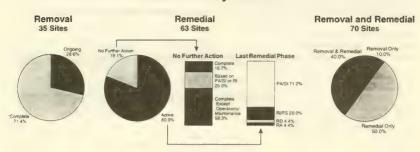
36-47 Months

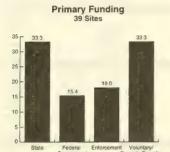
48-59 Months

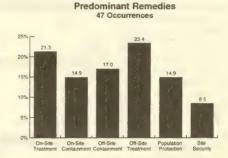
60-71 Months

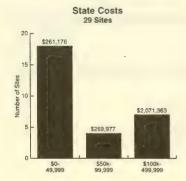
More Than 71 Months

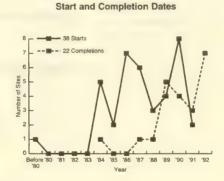
State/Territory—Maine











State/Territory—Maryland

Maryland reported 378 sites. Thirty of these sites had both Removal and Remedial actions. The remaining 348 sites had only Remedial actions. Twenty-six of the sites had Removal actions that were Complete and 212 of the sites had Remedial actions that required No Further Action. One of the sites in the No Further Action designation is a construction completion. All completed actions were as of December 31, 1992.

The most prevalent Predominant Remedies were Off-Site Containment with 70 occurrences and On-Site Containment with 62 occurrences. The total number of Predominant Remedies reported was 163.

The Total Cost reported was \$2,036,816. State cost accounted for \$619,750 with 8 sites, and PRP cost accounted for \$1,417,066 with 6 sites.
One site had a PRP cost of \$875,000.

A Primary Funding source was reported for 71 sites, with Enforcement at 34 sites, the Federal Government at 19, Voluntary/Property Transfer at 13, and the State at 5.

Two sites were completed prior to 1980. Thirty-one sites had **Duration** of Response Actions of Less Than 12 Months. The average **Duration** of Response Actions was 6 months and 10 days based on the 40 sites that reported start and completion dates.

Maryland has Hazardous Materials and Hazardous Substances Regulations that permit cost recovery and provide for community awareness.

Data Display (Total Sites = 378)

30	100.00%
4	13.33%
26	86.67%
378	100.00%
166	43.92%
212	56.08%
211	99.53%
1	0.47%
0	0.00%
	4 26 378 166 212 211

Last Remedial Phase	43	100.00%
PA/SI	40	93.02%
RI/FS	3	6.98%
RD	0	0.00%
RA	0	0.00%

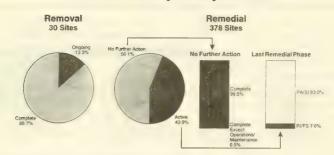
Predominant Remedies	163	100,00%
On-Site Treatment	16	9.82%
On-Site Containment	62	38.04%
Off-Site Containment	70	42.94%
Off-Site Treatment	0	0.00%
Population Protection	1	0.61%
Site Security	14	8.59%
Innovative Technology	0	0.00%

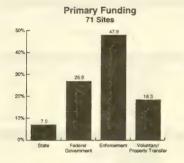
Total Cost		\$2,036,816.00
State		\$619,750.00
Sites: 8	State Average: \$77,468.75	
PRP		\$1,417,066.00
Sites: 6	PRP Average: \$236,177.67	

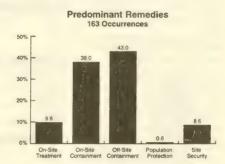
Primary Funding	71	100.00%
State	5	7.04%
Federal Government	19	26.76%
Enforcement	34	47.89%
Voluntary/Property Transfer	13	18.31%

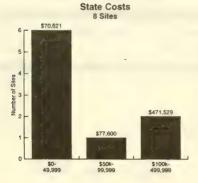
Duration of Response Actions	40	*	100.00%
Less Than 12 Months	31		77.50%
12-23 Months	8		20.00%
24-35 Months	1		2.50%
36-47 Months	0		0.00%
48-59 Months	0		0.00%
60-71 Months	0		0.00%
More Than 71 Months	0		0.00%

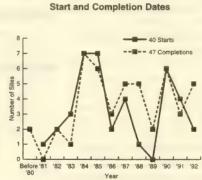
State/Territory—Maryland











State/Territory—Massachusetts

Massachusetts reported 3,089 sites. All of these sites had both Removal and Remedial actions. Four hundred twenty of the sites had Removal actions that were Complete, and 536 of the sites had Remedial actions that required No Further Action. Of the 2,553 sites with Active Remedial actions that reported a Last Remedial Phase, 1,522 were RI/FS, 929 were PA/SI, 110 were RA, and 64 were RD.

For sites with Removal actions that were Complete or Remedial actions that required No Further Action, the prevalent Predominant Remedies were Off-Site Containment with 257 occurrences and On-Site Containment with 102 occurrences.

State cost was reported for 33 sites for a total of \$2,553,857. Thirty-one of these sites had cost less than \$50,000 per site.

Although there was no PRP cost reported and the Primary Funding source was reported as Voluntary/Property Transfer for 523 of the 550 sites, this result is somewhat misleading. The Enforcement and Voluntary/Property Transfer categories should be combined to account for 95% of the Primary Funding. This is because the Massachusetts Superfund Law has strict joint and severe liability, driving Voluntary and Property Transfer activities because of the threat of successful enforcement.

Three hundred and ninety-one sites were started and completed. Thirty-four sites were started prior to 1986, and 441 sites were started in 1986 or later. All completed actions occurred after 1986.

The Massachusetts Superfund Law enacted in 1983 and amended in July 1992 gave the Department of Environmental Protection the task of ensuring permanent cleanup of oil and hazardous materials releases, defined who is legally responsible for assessment and cleanup, and required them to either perform cleanups themselves or reimburse the State for doing so. Newly promulgated regulations in the Massachusetts Contingency Plan contain a push for faster and more streamlined voluntary cleanups through the use of Licensed Site Professionals. This new program is intended to use government resources more efficiently to address a large number of sites.

Data Display (Total Sites = 3,089)

Removal	3.089	100.00%
Ongoing	2,669	86.40%
Complete	420	13.60%
Remedial	3,089	100.00%
Active	2,553	82.65%
No Further Action	536	17.35%
No Remedial Action Based on PA/SI or RI	157	29.29%
All Remedial Action Complete Except Operations/Maint.	28	5.22%
All Remedial Action Complete	351	65.49%
Last Remedial Phase	2,625	100.00%

Last Remedia: Phase	2,023	100.00%
PA/SI	929	35.39%
RI/FS	1,522	57.98%
RD	64	2.44%
RA	110	4.19%

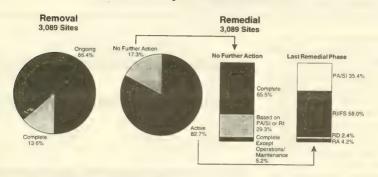
Predominant Remedies	383	100.00%
On-Site Treatment	24	6.27%
On-Site Containment	102	26.63%
Off-Site Containment	257	67.10%
Off-Site Treatment	0	0.00%
Population Protection	i)	0.00%
Site Security	0	0.00%
Innovative Technology	13	0.00%

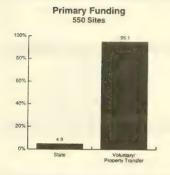
Total Cost		\$2,553,857,00
State		\$2,553,857.00
Sites: 33	State Average: \$77,389.61	
PRP		\$0.00
Sites: 0	PRP Average: \$0.00	

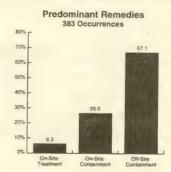
Primary Funding	550	100.00%
State	27	4.91%
Federal Government	0	0.00%
Enforcement	0	0.00%
Voluntary/Property Transfer	523	95.09%

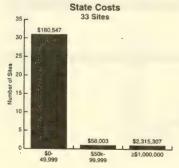
Duration of Response Actions	391	100.00°
Less Than 12 Months	169	43.22%
12-23 Months	118	30.18%
24-35 Months	46	11.76%
36-47 Months	22	5.64%
48-59 Months	10	2.56%
60-71 Months	13	3.32%
More Than 71 Months	13	3.32%

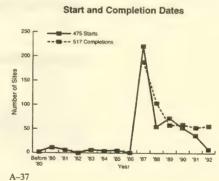
State/Territory—Massachusetts











State/Territory—Michigan

Michigan reported 2,662 sites, of which 1,927 had both Removal and Remedial actions and 735 had only Remedial actions. There were no sites that had only Removal actions. All of the sites with only Remedial actions are designated as No Further Action Based on PA/SI or RI. Three hundred forty-three of the sites with both Removal and Remedial actions were designated as construction completions.

RUFS was reported as the Last Remedial Phase for 1,701 of the 1,713 sites reporting a Last Remedial Phase.

Total Cost was reported for 496 sites, in the amount of \$159,226,582. All reported cost was State cost. For the 254 sites reporting cost under \$50,000 per site, the average cost was \$13,455.

One thousand seven hundred ninetysix sites reported a **Primary Funding** source, of which 1,353 reported **En**forcement and 443 reported the State.

Michigan has enacted and amended environmental acts dating back to 1929. The acts passed or amended since 1979 include regulations for the management, evaluation, and cleanup of hazardous waste. Michigan also publishes a yearly listing of environmental containment sites within the State.

Data Display (Total Sites = 2,662)

Removal	1,927	100.00%
Ongoing	1,584	82.20%
Complete	343	17.80%
Remedial	2.662	100.00%
Active	1,584	59.50%
No Further Action	1,078	40.50%
No Remedial Action Based on PA/SI or RI	735	68.18%
All Remedial Action Complete Except Operations/Maint.	29	2.69%
All Remedial Action Complete	314	29.13%

1,713	100.00%
0	0.00%
1,701	99.30%
2	0.12%
10	0.58%
	0 1,701 2

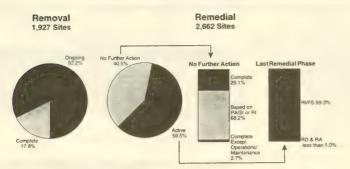
Predominant Remedies		100.00%
On-Site Treatment	0	0.00%
On-Site Containment	0	0.00%
Off-Site Containment	0	0.00%
Off-Site Treatment	0	0.00%
Population Protection	0	0.00%
Site Security	0	0.00%
Innovative Technology	0	0.00%

Total Cost		\$159,226,582.00
State		\$159,226,582.00
Sites: 496	State Average: \$321,021.33	
PRP		\$0.00
Sites: 0	PRP Average: \$0.00	

Primary Funding	1.796	100.00%
State	443	24.68%
Federal Government	0	0.00%
Enforcement	1,353	75.32%
Voluntary/Property Transfer	ō	0.00%

Duration of Response Actions	0	100.00%
Less Than 12 Months	0	0.00%
12-23 Months	0	0.00%
24–35 Months	D D	0.00%
36-47 Months	Ø.	0.00%
48-59 Months	0	0.00%
60-71 Months	D	0.00%
More Than 71 Months	Ō	0.00%

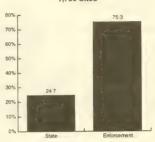
State/Territory—Michigan

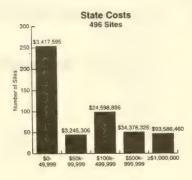


Removal and Remedial 2,662 Sites

Remodal & Remodal T2.4%

Primary Funding 1,796 Sites





A-39

State/Territory—Minnesota

Minnesota reported 414 sites, of which 36 had both Removal and Remedial actions, 6 had only Removal actions and 365 had only Remedial actions. Four of the 6 sites with only Removal actions were Complete. Eighty-six of the 365 sites with only Remedial actions were designated as requiring No Further Action.

The prevalent Last Remedial Phase for the sites with Remedial actions that were Active was PA/SI with 117, followed by RI/FS with 95, RD with 60, and RA with 16.

The Predominant Remedies were On-Site Containment with 114 occurrences and On-Site Treatment with 83 occurrences.

Total Cost was \$92,525,000 and was segmented as State cost of \$11,353,000 for 89 sites and PRP cost of \$81,172,000 for 89 sites.

Voluntary/Property Transfer was the Primary Funding source at 220 sites.

Thirty-nine of the sites had a **Dura**tion of Response Actions of Less Than 12 Months, with the first site started and completed in 1978. Eighteen sites were started in 1992 and 11 were completed in that year.

In 1983, Minnesota passed an Environmental Response and Liability Act, which permits the State to spend funds to investigate and clean up hazardous substances.

D . D: 1	T	
Data Display	(Total Sites = 414)	

Ongoing Complete	11 31	26.19% 73.81%
Remedial	401	100.00%
Active	293	73.07%
No Further Action	108	26.93%
No Remedial Action Based on PA/SI or RI	56	51.85%
All Remedial Action Complete Except Operations/Maint.	35	32.41%
All Remedial Action Complete	17	15.74%
Last Remedial Phase	288	100.00%
		40 (00)

Last Remedial Phase	288	100.00%
PA/SI	117	40.62%
RI/FS	95	32.99%
RD	60	20.83%
RA	16	5.56%

Predominant Remedies	297	100.00%
On-Site Treatment	83	27.95%
On-Site Containment	114	38.38%
Off-Site Containment	45	15.15%
Off-Site Treatment	27	9.09%
Population Protection	17	5.72%
Site Security	10	3.37%
Innovative Technology	1	0.34%

Total Cost		\$92,525,000.00
State		\$11,353,000.00
Sites: 89	State Average: \$127,561.80	
PRP		\$81,172,000.00
Sites: 89	PRP Average: \$912,044.94	

343	100.00%
61	17.78%
6	1.75%
56	16.33%
220	64.14%

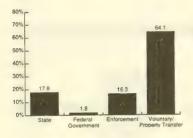
Duration of Response Actions	80	100.00%
Less Than 12 Months	39	48.75%
12-23 Months	13	16.25%
24-35 Months	14	17.50%
36-47 Months	10	11.25%
48-59 Months	2	2.50%
60-71 Months	0	0.00%
More Than 71 Months	3	3.75%

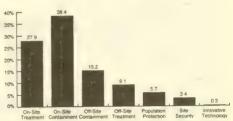
State/Territory—Minnesota

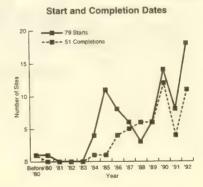


Primary Funding 343 Sites

Predominant Remedies 297 Occurrences







State/Territory—Mississippi

Mississippi reported 110 sites. Twelve of these sites had both Removal and Remedial actions, 5 had only Removal actions and 93 had only Remedial actions. Two of the sites with both Removal and Remedial actions had the Removal actions designated as Complete and the Remedial actions designated as requiring No Further Action. For the remaining 10 sites with both Removal and Remedial actions, all the Removal actions were designated Complete and all of the Remedial actions were designated Active. All 5 sites with only Removal actions were Complete (i.e., the Removal actions were Complete). Fourteen of the 93 sites with only Remedial actions were designated as requiring No Further Action.

The Predominant Remedies were Off-Site Containment with 22 occurrences and On-Site Treatment with 13

For the sites with Remedial actions that were Active, the most prevalent Last Remedial Phase was RUFS with 49 of the 89 sites that reported a Last Remedial Phase, followed by PA/SI with 25 sites, RA with 11 sites and RD with 4 sites.

Enforcement was the prevalent Primary Funding source with 108 of the 110 sites that reported a Primary Funding source. The remaining 2 sites had reported the Federal Government as the Primary Funding source.

Twenty-four of the sites had reported a Duration of Response Actions with a range from Less Than 12 Months to More Than 71 Months. The average Duration of Response Actions for these 24 sites was 31 months and 8 days.

Removal	17	100.00°。
Ongoing	0	0.00%
Complete	17	100.00%
Remedial	105	100.00%
Active	89	84.76%
No Further Action	16	15.24%
No Remedial Action Based on PA/SI or RI	8	50.00%
All Remedial Action Complete Except Operations/Maint.	5	31.25%
All Remedial Action Complete	3	18.75%
Last Remedial Phase	89	100.00%
PA/SI	25	28.09%
RI/FS	49	55.06%
RD	4	4.49%
RA	11	12.36%
Predominant Remedies	47	100.00%
On-Site Treatment	13	27.66%
On Site Containment	5	10 64%

Data Display (Total Sites = 110)

Total Cost	1	-	\$0.00
State Sites: 0	State Average: \$0.00		\$0.00
PRP	State Average. 90.00		\$0.00
Sites: 0	PRP Average: \$0.00		
Primary Funding		110	100.00%

22

46.80%

6.38%

2.13% 4.26%

2.13%

State	0	0.00%
Federal Government	2	1.82%
Enforcement	108	98.18%
Voluntary/Property Transfer	0	0.00%
Duration of Response Actions	24	100.00%
Less Than 12 Months	3	12.50%
12-23 Months	5	20.83%
24-35 Months	3	12.50%

Off-Site Containment

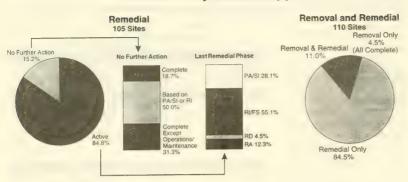
Population Protection

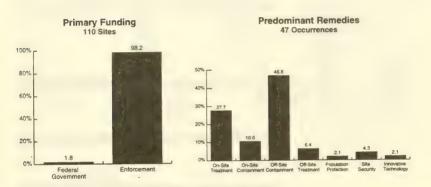
Innovative Technology

Off-Site Treatment

Site Security

State/Territory—Mississippi





RD

RA

State/Territory—Missouri

Missouri reported 44 sites, which consisted of 23 sites with only Removal actions and 21 sites with only Remedial actions. All of the Removal actions were Complete and 10 of the Remedial actions were designated as All Remedial Action Complete Except Operations/Maintenance.

The prevalent Last Remedial Phase for the 11 Remedial actions that were Active was RIFS with 6 sites.

The Predominant Remedies were Off-Site Containment with 29 occurrences and Site Security with 11 occurrences.

PRP cost was reported for 5 sites, of which 2 were sites had only Removal actions that were Complete. The total for these 2 sites was \$7,500,000. State cost of \$28,000 was reported for 2 other sites with only Removal actions that were Complete. The Total Cost reported was \$11,218,000: PRP cost with \$11,090,000 and State cost with \$128,000.

The Primary Funding source was Enforcement with 35 sites.

Twenty-three sites had a Duration of Response Actions of 2 years or less. The average Duration of Response Actions was 20 months and 24 days for the 34 sites that reported start and completion dates. Prior to 1986, 10 sites were started, and 8 sites were completed.

Removal		23	100.00%
Ongoing		0	0.00%
Complete		23	100.00%
Remedial	?	21	100.00%
Active		11	52.38%
No Further Action		10	47.62%
No Remedial Action Based on PA/SI	or RI	0	0.00%
All Remedial Action Complete Excep	ot Operations/Maint.	10	100.00%
All Remedial Action Complete		0	0.00%
Last Remedial Phase		10	100.00%
PA/SI		1	10.00%
PI/ES		6	60 00%

Predominant Remedies	. 56	100.00%
On-Site Treatment	7	12.50%
On-Site Containment	7	12.50%
Off-Site Containment	29	51.79%
Off-Site Treatment	2	3.57%
Population Protection	0	0.00%
Site Security	11	19.64%
Innovative Technology	0	0.00%

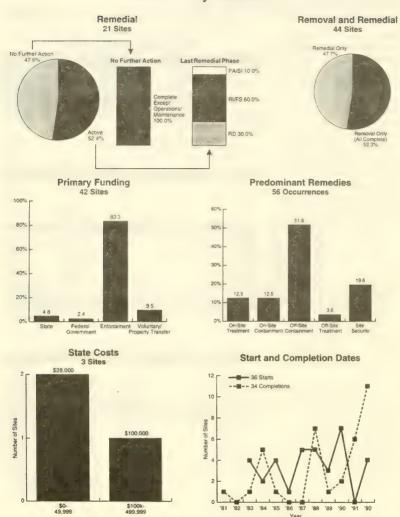
30.00%

Total Cost		\$11,218,000.00
State		\$128,000.00
Sites: 3	State Average: \$42,666.67	
PRP		\$11,090,000.00
Sites: 5	PRP Average: \$2,218,000.00	

Primary Funding	42	100.00%
State	2	4.76%
Federal Government	1	2.39%
Enforcement	35	83.33%
Voluntary/Property Transfer	4	9.52%

uration of Response Actions	34	100.00°
Less Than 12 Months	13	38.249
12-23 Months	10	29.419
24-35 Months	5	14.719
36-47 Months	2	5.889
48-59 Months	2	5.889
60-71 Months	1	2.949
More Than 71 Months	1	2.949

State/Territory—Missouri



A-45

State/Territory—Montana

Montana reported 214 sites. Fortyseven of these sites had both Removal and Remedial actions, 6 of the sites had only Removal actions and 129 of the sites had only Remedial actions. There were also 32 sites that were under tribal jurisdiction, but their status was unknown.

The total number of sites with Removal actions was 53, with 26 of the actions being Complete. The total number of sites with Remedial actions was 176, with 7 requiring No Further Action; 4 of the 7 were designated as construction completions.

The two prevalent Predominant Remedies were Off-Site Containment and Off-Site Treatment, both with 14

For the 169 sites with Remedial actions that were Active the prevalent Last Remedial Phase was PA/SI with 132 sites.

Because most Removal and Remedial actions are conducted by responsible parties and Montana did not, generally, have cost information on actions conducted by responsible parties, Montana's cost information was only available for 4 sites. For these sites, the State cost was \$760,000 for 3 sites, and the one site with PRP cost reported a cost of \$250,000.

The Primary Funding source was the Federal Government with 92 sites, followed by Voluntary/Property Transfer with 37, the State with 33, and Enforcement with 15.

Montana produced a report in November 1993 on its Superfund accomplishments for the period 1983-1993.

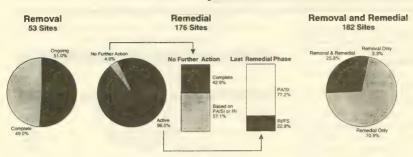
Data Display (Total Sites = 214)			
Removal	53	100.00%	
Ongoing	27	50.94%	
Complete	26	49.06%	
Remedial ·	176	100.00%	
Active	169	96.02%	
No Further Action	7	3.98%	
No Remedial Action Based on PA/SI or RI	3	42.86%	
All Remedial Action Complete Except Operations/Maint.	0	0.00%	
All Remedial Action Complete	4	57.14%	
Last Remedial Phase	171	100.00%	
PA/SI	132	77.19%	
RI/FS	39	22.81%	
RD	0	0.00%	
RA	0	0.00%	
Predominant Remedies	50	100.00%	
On-Site Treatment	3	6.00%	
On-Site Containment	12	24.00%	
Off-Site Containment	14	28.00% 28.00%	
Off-Site Treatment Population Protection	3	6.00%	
Site Security	4	8.00%	
Innovative Technology	0	0.00%	
Total Cost		\$1,010.000.00	
State		\$760,000.00	
Sites: 3 State Average: \$253,333.33		\$250,000.00	
Sites: 1 PRP Average: \$250,000.00		\$250,000.00	
Sites. 1 Tra Avaago. \$220,000.00			
Primary Funding	177	100.00°。	
State	33	18.64%	
Federal Government	92	51.98%	
Enforcement	15	8.48%	
Voluntary/Property Transfer	37	20.90%	
Duration of Response Actions	0	100.00° 。	
Less Than 12 Months	0	0.00%	
12-23 Months	Ō	0.00%	
24–35 Months	Ø	0.00%	
36–47 Months	0	0.00%	
48–59 Months 60–71 Months	Ö	0.00%	
00-/1 Monus	U	0.00%	

0.00%

0

More Than 71 Months

State/Territory—Montana



Primary Funding 177 Sites

60%

50%

40%

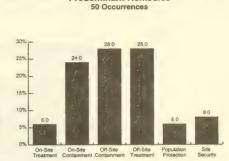
18.6

10%

State

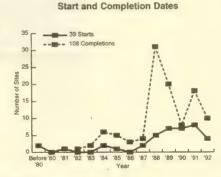
Federal Enturbement Voluntary

Proceedings 177 Sites



Predominant Remedies





A-47

State/Territory—Nebraska

Nebraska reported 15 sites. All of these were sites that had only Remedial actions that were Active and a Last Remedial Phase of PA/SI.

The Primary Funding source for 10 sites was Enforcement.

Nine of Nebraska's sites had landfills.

Nebraska has the Nebraska Ground Water Quality Standards, which are used by all programs such as solid waste, Resource Conservation and Recovery Act, and leaking underground storage tanks.

Removal		0	100.00° c
Ongoing		0	0.00%
Complete		0	0.00%
Remedial		15	100.00°
Active		15	100.00%
No Further Action		0	0.00%
No Remedial Action Bas	sed on PA/SI or RI	0	0.00%
All Remedial Action Co	mplete Except Operations/Maint.	0	0.00%
All Remedial Action Co	mplete	0	0.00%
Last Remedial Phase		15	100.00°c
PA/SI		15	100.00%
RI/FS		0	0.00%
RD		0	0.00%
RA		0	0.00%
Predominant Remedies		. 0	100.00° a
On-Site Treatment		0	0.00%
On-Site Containment		0	0.00%
Off-Site Containment		0	0.00%
Off-Site Treatment		0	0.00%
Population Protection		0	0.00%
Site Security		0	0.00%
Innovative Technology		0	0.00%
Total Cost			50.00
State			\$0.00
Sites: 0	State Average: \$0.00		
PRP			\$0.00
Sites: 0	PRP Average: \$0.00		

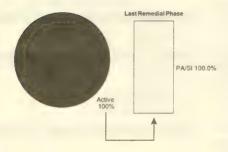
Data Display (Total Sites = 15)

Federal Government	D	0.00%
Enforcement	10	100.00%
Voluntary/Property Transfer	0	0.00%
Duration of Response Actions	0	100.00°°
Less Than 12 Months	D	0.00%
12-23 Months	0	0.00%
24-35 Months	i0	0.00%
36-47 Months	0	0.00%
48-59 Months	0	0.00%
60-71 Months	0	0.00%
More Than 71 Months	0	0.00%

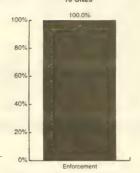
Primary Funding

State/Territory—Nebraska

Remedial 15 Sites



Primary Funding 10 Sites



State/Territory—Nevada

Nevada reported 34 sites, all of which were sites with only **Remedial** actions. Ten of these sites required **No Further Action**, of which 9 were designated as construction completions.

The Predominant Remedy was On-Site Treatment with 11 occurrences.

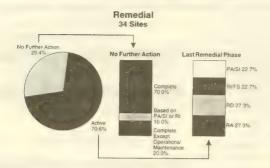
Voluntary/Property Transfer was the Primary Funding source with 21 sites. Enforcement followed with 10 sites.

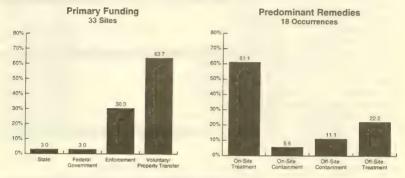
One site was started prior to 1986. Of the remaining 33 other sites, 25 were started in the 3-year period 1990–1992. The average **Duration of Response Actions** was 15 months for the 7 sites reporting start and completion dates.

Nevada's program began in 1986 with the passage of legislation for the disposal of hazardous waste. This legislation makes State funds available if a viable PRP is not present.

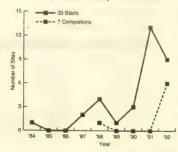
Data Display (Total Sites = 34)		
Removal	0	100.00%
Ongoing	0	0.00%
Complete	0	0.00%
Remedial	34	100.00%
Active	24	70.59%
No Further Action	10	29.41%
No Remedial Action Based on PA/SI or RI	1	10.00%
All Remedial Action Complete Except Operations/Maint.	2	20.00%
All Remedial Action Complete	7	70.00%
Last Remedial Phase	22	100.00°。
PA/SI	5	22.73%
RL/FS	5	22.73%
RD	6	27.27%
RA	6	27.27%
Predominant Remedies	18	100.00%
On-Site Treatment	11	61.11%
On-Site Containment	I	5.56%
Off-Site Containment	2	11.11%
Off-Site Treatment	4	22.22%
Population Protection	0	0.00%
Site Security Innovative Technology	n n	0.00%
Total Cost		\$0.00
State		\$0.00
Sites: 0 State Average: \$0.00		\$0.00
PRP		\$0.00
Sites: 0 PRP Average: \$0.00		
Primary Funding	33	100.00%
State	1	3.03%
Federal Government	1	3.03%
Enforcement	10	30.30%
Voluntary/Property Transfer	21	63.64%
Duration of Response Actions	7	100.00%
Less Than 12 Months	4	57.14%
12–23 Months	2	28.57%
24–35 Months	0	0.00% 14.29%
36–47 Months 48–59 Months	0	0.00%
48–39 Months 60–71 Months	0	0.00%
More Than 71 Months	ō	0.00%

State/Territory—Nevada





Start and Completion Dates



A-51

Primary Funding

Enforcement

12-23 Months

24-35 Months

36-47 Months

48-59 Months

60-71 Months

Federal Government

Voluntary/Property Transfer

Duration of Response Actions

Less Than 12 Months

More Than 71 Months

State/Territory—New Jersey

New Jersey reported 5,996 sites. Of these, 1,827 had both Removal and Remedial actions. There was 1 site with only Removal actions and 4,168 sites with only Remedial actions. The total number of sites with Removal actions was 1,828, with 1,030 designated Complete. The sites with Remedial actions totaled 5,995, with 4,621 requiring No Further Action. For sites with Remedial actions totaled 5,995, with 4,621 requiring No Further Action. For sites with Remedial actions that were Active, 1,121 reported a Last Remedial Phase, with PA/SI being the most prevalent with 546 sites.

The most prevalent Predominant Remedy was Off-Site Containment with 1,017 occurrences.

Total Cost reported was \$343,694,743 for 25 sites with only State cost, 1,076 sites with only PRP costs, and 7 sites with both State and PRP cost. The average cost for all sites that reported PRP cost was \$288,565 per site, and the average cost for all sites that reported State cost was \$974,329 per site.

Primary Funding source was reported for 4,956 sites, with Voluntary/ Property Transfer being reported for 4,786 of those sites.

Five sites were started and 2 completed prior to 1980. From 1980 to 1986, 669 sites were estarted and 439 were completed. For 3,389 sites, the Duration of Response Actions was Less Than 12 Months. New Jersey reported an additional 300 sites with durations less than 1 month, giving the State a total of 3,689 sites with Durations of Response Actions of Less Than 12 Months. The average Duration of Response Actions for all 4,440 sites reporting start and completion dates was 9 months and 10 days.

Data Display (Total Sites = 5,996)		
Removal	1,828	100.00%
Ongoing	798	43.659
Complete	1,030	56.359
Remedial	5,995	100.00%
Active	1,374	22.929
No Further Action	4,621	77.089
No Remedial Action Based on PA/SI or RI	3,673	79.489
All Remedial Action Complete Except Operations/Maint.	23	0.509
All Remedial Action Complete	925	20.029
ast Remedial Phase	1,121	100.009
PA/SI	546	48.709
RUFS	245	21.869
RD	267	23.829
RA	63	5.629
Predominant Remedies	1.283	100.00°
On-Site Treatment	37	2.88
On-Site Containment	149	11.61
Off-Site Containment	1,017	79.27
Off-Site Treatment	42	3.27 ⁴ 0.16 ⁴
Population Protection	35	2.73
Site Security Innovative Technology	1	0.08
Total Cost		3,694,743.00
State Sites: 32 State Average: \$974,329.13	\$31	,178,532.00
PRP	\$312	2,865,840.00
Sites: 1,083 PRP Average: \$288,565.29		

0.63%

0.08%

2.72%

96.57%

76.33%

12.09%

4.68%

3.18%

1 73%

0.82%

1.17%

31

135

4.786

4,440

3 389

537

208

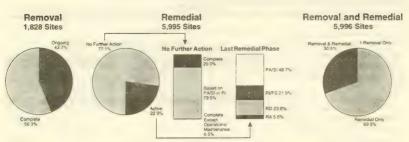
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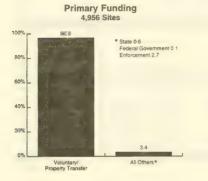
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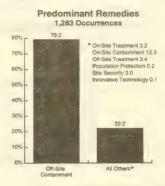
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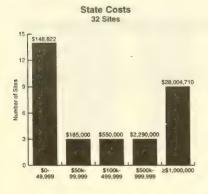
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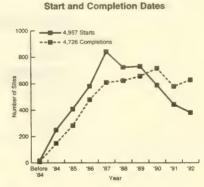
State/Territory—New Jersey











State/Territory—New Mexico

New Mexico reported 58 sites. Of these sites, 8 had only **Removal** actions and 50 had only **Remedial** actions. One of the sites had **Removal** actions that were **Ongoing** and 49 had **Remedial** actions that were **Active**.

The seven sites with Removal actions that were Complete used three Predominant Remedies: Off-Site Containment, Off-Site Treatment, and Population Protection.

The only site designated as requiring No Remedial Action Based on PA/SI or RI reported a State cost of \$100,000. Also, one site with only a Removal action that was Complete reported a State cost of \$35,000. A PRP cost of \$5,000,000 was reported for one site with Remedial actions that were Active. The Last Remedial Phase for that site was RD.

Fifty-seven of the sites reported a Primary Funding source, with the Federal Government reporting 19 sites being the most prevalent, followed by Voluntary/Property Transfer with 16 sites, the State with 12 sites and Enforcement with 10 sites.

The average **Duration of Response**Actions was 5 months and 17 days.

Data Display	(Total	Sites :	= 58)
--------------	--------	---------	-------

Hemovai	8	100.00%
Ongoing	1	12.50%
Complete	7	87.50%
Remedial	50	100.00%
Active	49	98.00%
No Further Action	1	2.00%
No Remedial Action Based on PA/SI or RI	1	100.00%
All Remedial Action Complete Except Operations/Maint.	0	0.00%
All Remedial Action Complete	0	0.00%

Last Remedial Phase	49	100.00°。
PA/SI	34	69.39%
RL/FS	4	8.16%
RD	11	22.45%
RA	0	0.00%

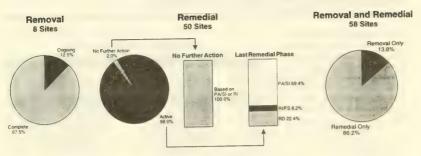
Predominant Remedies	14	100.00°°
On-Site Treatment	1	7.14%
On-Site Containment	2	14.29%
Off-Site Containment	7	50.00%
Off-Site Treatment	2	14.29%
Population Protection	1	7.14%
Site Security	1	7.14%
Innovative Technology	0	0.00%

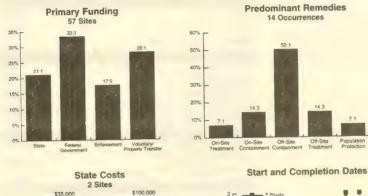
Total Cost		\$5,135,000.00
State		\$135,000.00
Sites: 2	State Average: \$67,500.00	
PRP	PRP A196000: \$5,000,000,00	\$5,000,000.00

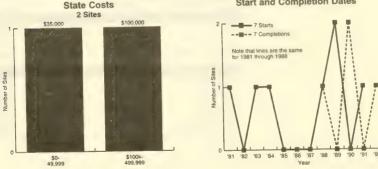
Primary Funding	57	100.00°。
State	12	21.05%
Federal Government	19	33.33%
Enforcement	10	17.55%
Voluntary/Property Transfer	16	28.07%

Duration of Response Actions	7	100.00°e
Less Than 12 Months	5	71.43%
12-23 Months	2	28.57%
24-35 Months	ō	0.00%
36-47 Months	ō	0.00%
4859 Months	0	0.00%
60-71 Months	0	0.00%
More Than 71 Months	ō	0.00%

State/Territory—New Mexico







State/Territory—North Carolina

North Carolina reported 873 sites. Two of these sites had only Removal actions, and the remaining 871 had only Remedial actions. The 2 sites with only Removal actions were Ongoing. Six hundred forty-six of the Remedial actions were Active, 217 required No Further Action Based on PA/SI or RI, and 8 were construction completions.

For the sites with Remedial actions that were Active, 635 reported a Last Remedial Phase of PA/SI.

Data Display (Total Sites = 873)			
Removal	2	100.00%	
Ongoing	2	100.00%	
Complete	0	0.00%	
Remedial	871	100.00%	
Active	646	74.17%	
No Further Action	225	25.83%	
No Remedial Action Based on PA/SI or RI	217	96.45%	
All Remedial Action Complete Except Operations/Maint.	5	2.22%	
All Remedial Action Complete	3	1.33%	
Last Remedial Phase	649	100.00°,	
PA/SI	635	97.84%	
RL/FS	9	1.39%	
RD	3	0.46%	
RA	2	0.31%	
Predominant Remedies	0	100.00°。	
On-Site Treatment	0	0.00%	
On-Site Containment	0	0.00%	
Off-Site Containment	0	0.00%	
Off-Site Treatment	0	0.00%	
Population Protection	0	0.00%	
Site Security	0	0.00%	
Innovative Technology	0	0.00%	
Total Cost		\$0.00	
State State State Assessment 60.00		\$0.00	
Sites: 0 State Average: \$0.00		\$0.00	
Sites: 0 PRP Average: \$0.00		30.00	
Primary Funding	0	100.00°。	
State	0	0.00%	
Federal Government	0	0.00%	
Enforcement	0	0.00%	
Voluntary/Property Transfer	ō	0.00%	
Duration of Response Actions	0	100.00%	
Less Than 12 Months	0	0.00%	
12-23 Months	0	0.00%	
24-35 Months	10	0.00%	
36-47 Months	0	0.00%	
48–59 Months	D D	0.00%	
60 71 Months	n	0.00%	

0.00%

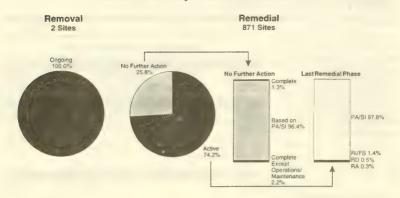
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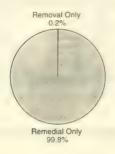
60-71 Months

More Than 71 Months

State/Territory-North Carolina



Removal and Remedial



State/Territory—Ohio

Ohio reported 86 sites, of which 15 sites had both Removal and Remedial actions, 22 had only Removal actions, and 47 had only Removal actions. One of the sites with both Removal and Remedial actions was designated construction completion (i.e., the Removal actions were Complete and All Remedial Action Complete Except Operations/Maintenance).

The 60 sites with Active Remedial actions that were Active had a Last Remedial Phase of RI/FS with 31 sites, PA/SI with 25 sites, RD with 3, and RA with 1.

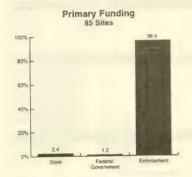
The Predominant Remedy was Off-Site Treatment with 6 occurrences.

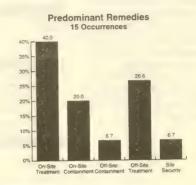
Enforcement was reported as the Primary Funding source for 82 of the 85 sites that reported a Primary Funding source.

Data Display (Total Sites = 86)		
Removal	37	100.00%
Ongoing	29	78.38%
Complete	8	21.62%
Remedial	62	100.00%
Active	60	96.77%
No Further Action	2	3.23%
No Remedial Action Based on PA/SI or RI	0	0.00%
All Remedial Action Complete Except Operations/Maint.	2	100.00%
All Remedial Action Complete	0	0.00%
Last Remedial Phase	61	100.00%
PA/SI	25	40.98%
RI/FS	31	50.82%
RD	3	4.92%
RA	2	3.28%
Predominant Remedies	15	100.00%
On-Site Treatment	6	40.00%
On-Site Containment	3	20.00%
Off-Site Containment	1	6.67%
Off-Site Treatment	4	26.66%
Population Protection	0	0.00%
Site Security	1	6.67%
Innovative Technology	0	0.00%
Total Cost		\$0.00
State		\$0.00
Sites: 0 State Average: \$0.00		60.00
PRP Sites: 0 PRP Average: \$0.00		\$0.00
Primary Funding	85	100.00%
State	2	2.35%
Federal Government	ī	1.18%
Enforcement	82	96.47%
Voluntary/Property Transfer	0	0.00%
Duration of Response Actions	0	100.00%
Less Than 12 Months	- 6	0.00%
12-23 Months	0	0.00%
24-35 Months	0	0.00%
36-47 Months	0	0.00%
48-59 Months	0	0.00%
60-71 Months	0	0.00%
More Than 71 Months	ō	0.00%

State/Territory-Ohio







Start and Completion Dates 15 0 Starts 10 Starts 10

A-59

State/Territory—Oklahoma

Oklahoma reported 40 sites. All 40 sites had only Removal or Remedial actions. No sites had both Removal and Remedial actions. Of the 32 sites with only Removal actions, all were designated Complete. Four of the 8 sites with only Remedial actions were designated construction completion.

The most prevalent Predominant Remedy was Off-Site Containment with 31 occurrences.

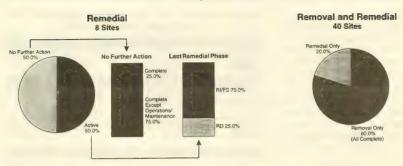
The Total Cost of \$85,590 was reported for 29 of the sites with only Removal actions. All reported cost was State cost. No PRP cost was known.

The State and Voluntary/Property Transfer were the reported Primary Funding sources with 29 sites and 11 sites, respectively.

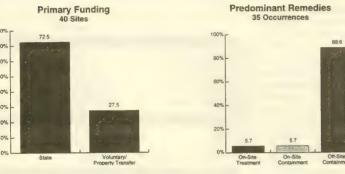
The first site was started prior to 1980. Thirty-four sites reported start dates after 1986. The average Duration of Response Actions was 21 months and 13 days.

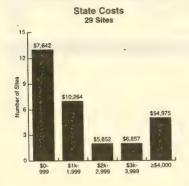
Data Display (Total Sites = 40)			
Removal	32	100.00%	
Ongoing	0	0.00%	
Complete	32	100.00%	
Complete	32	100.00%	
Remedial	8	100.00%	
Active	4	50.00%	
No Further Action	4	50.00%	
No Remedial Action Based on PA/SI or RI	0	0.00%	
All Remedial Action Complete Except Operations/Maint.	3	75.00%	
All Remedial Action Complete	1	25.00%	
Last Remedial Phase	4	100.00%	
PA/SI	0	0.00%	
RI/FS	3	75.00%	
RD	1	25.00%	
RA	Ü	0.00%	
Predominant Remedies	35	100.00%	
	2	5.71%	
On-Site Treatment On-Site Containment	2	5.71%	
Off-Site Containment Off-Site Containment	31	88.58%	
Off-Site Treatment	-	0.00%	
Population Protection	0	0.00%	
Site Security	0	0.00%	
Innovative Technology	0	0.00%	
Total Cost	-	\$85.590.00	
State		\$85,590.00	
Sites: 29 State Average: \$2,951.38		\$65,570.00	
PRP		\$0.00	
Sites: 0 PRP Average: \$0.00			
Primary Funding	40	100.00%	
State	29	72.50%	
Federal Government	0	0.00%	
Enforcement	15	0.00%	
Voluntary/Property Transfer	11	27.50%	
Duration of Response Actions	7	100.00%	
Less Than 12 Months	5	71.42%	
12-23 Months	1	14.29%	
24–35 Months	0	0.00%	
36-47 Months	ō	0.00%	
48–59 Months	0	0.00%	
60–71 Months	0	0.00% 14.29%	
More Than 71 Months	- 1	14.29%	

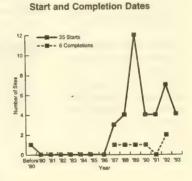
State/Territory—Oklahoma



Primary Funding 40 Sites 80% 70% 60% 50% 40% 27.5 30% 10%







A-61

State/Territory—Oregon

Oregon reported 307 sites. Five of the sites were sites with only Removal actions, 234 with only Removal actions, 230 with both Removal and Removal actions, and 48 with neither a Removal nor a Remedial action. Of the total 25 sites with Removal actions as Ongoing, and 16 designated the actions as Complete. Of the total 254 sites with Remedial actions, 205 of the sites designated the actions as Active, and 49 designated the actions as requiring No Further Action, of which 8 were designated construction completions.

A Last Remedial Phase was reported for 180 sites with Remedial actions that were Active; 165 were PA/SI, 13 were RI/FS, and one site each was RD and RA.

A Primary Funding source was reported for 236 sites; 117 had the State, 23 had the Federal Government, and 96 had Enforcement. Oregon does not track Enforcement activities separately for Voluntary. The State estimates that half the sites reported as Enforcement were Voluntary.

Duration of Response Actions was reported for 21 sites. Twelve of these sites had Duration of Response Actions of Less Than 12 Months. The average Duration of Response Actions for all 21 sites was 15 months and 18 days.

Oregon prepares an annual report on its cleanup efforts that depicts its plans and accomplishments over the year. Oregon also prepared an Environmental Cleanup Manual in 1992. The purpose of this Manual is to "provide a general description of the government cleanup programs and explain more specifically the cleanup process offered" by the

Data Display (Total Sites = 307)

Removal Ongoing Complete Remedial Active No Further Action No Remedial Action Based on PA/SI or RI All Remedial Action Complete Except Operations/Maint. All Remedial Action Complete Last Remedial Phase PA/SI RUFS RD RA Predominant Remedies On-Site Treatment On-Site Containment Off-Site Containment	25 9 16 254 205 49 41 1 7	64.00% 100.00% 80.71% 19.29% 83.67% 2.04% 14.29%
Complete Remedial Active No Further Action No Remedial Action Based on PA/SI or RI All Remedial Action Complete Except Operations/Maint. All Remedial Action Complete Last Remedial Phase PA/SI RIFS RD RA Predominant Remedies On-Site Treatment On-Site Treatment	16 254 205 49 41 1 7	36.00% 64.00% 100.00% 80.71% 19.29% 83.67% 2.04% 14.29%
Complete Remedial Active No Further Action No Remedial Action Based on PA/SI or RI All Remedial Action Complete Except Operations/Maint. All Remedial Action Complete ast Remedial Phase PA/SI RI/FS RD RA On-Site Treatment On-Site Treatment	254 205 49 41 1 7	100.00% 80.71% 19.29% 83.67% 2.04% 14.29%
Active No Further Action No Remedial Action Based on PA/SI or RI All Remedial Action Complete Except Operations/Maint. All Remedial Action Complete ast Remedial Phase PA/SI RI/FS RD RA On-Site Treatment On-Site Treatment	205 49 41 1 7	80.71% 19.29% 83.67% 2.04% 14.29%
No Further Action No Remedial Action Based on PA/SI or RI All Remedial Action Complete Except Operations/Maint. All Remedial Action Complete ast Remedial Phase PA/SI RI/FS RD RA Predominant Remedies On-Site Treatment On-Site Containment	49 41 1 7	19.29% 83.67% 2.04% 14.29%
No Remedial Action Based on PA/SI or RI All Remedial Action Complete Except Operations/Maint. All Remedial Action Complete ast Remedial Phase PA/SI RI/FS RD RA redominant Remedies On-Site Treatment On-Site Containment	41 1 7	83.67% 2.04% 14.29%
All Remedial Action Complete Except Operations/Maint. All Remedial Action Complete ast Remedial Phase PA/SI RI/FS RD RA redominant Remedies On-Site Treatment On-Site Containment	1 7	2.04% 14.29%
All Remedial Action Complete ast Remedial Phase PA/SI RI/FS RD RA On-Site Treatment On-Site Containment	7	14.29%
ast Remedial Phase PA/SI RUFS RD RA RA On-Site Treatment On-Site Containment	180	
PA/SI RI/FS RD RA RA Tedominant Remedies On-Site Treatment On-Site Tontainment		100.00%
PA/SI RI/FS RD RA RA Tedominant Remedies On-Site Treatment On-Site Containment		100.00%
RI/FS RD RA RA On-Site Treatment On-Site Containment	165	
RD RA redominant Remedies On-Site Treatment On-Site Containment		91.66%
RA redominant Remedies On-Site Treatment On-Site Containment	13	7.22%
edominant Remedies On-Site Treatment On-Site Containment	1	0.56%
On-Site Treatment On-Site Containment	1	0.56%
On-Site Containment	0	100.00%
	0	0.00%
055 61-1 0-1-1-1	0	0.00%
On-Site Containment	0	0.00%
Off-Site Treatment	0	0.00%
Population Protection		0.00%
Site Security	0	
Innovative Technology	0	
otal Cost		0.00%

State			\$0.00
Sites: 0	State Average: \$0.00		
PRP			\$0.00
Sites: 0	PRP Average: \$0.00		
		226	100.00%

49.58%

0.00%

117

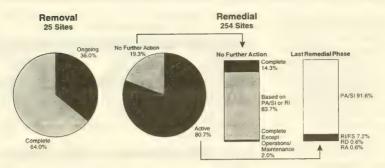
0

regeral Government	43	2.1410
Enforcement	96	40.68%
Voluntary/Property Transfer	0	0.00%
Duration of Response Actions	21	100.00°。
Less Than 12 Months	12	57.15%
12-23 Months	4	19.05%
24-35 Months	2	9.52%
36-47 Months	2	9.52%
48-59 Months	1	4.76%
60 71 Months	0	0.00%

More Than 71 Months

State

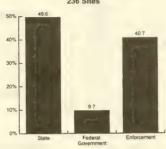
State/Territory—Oregon



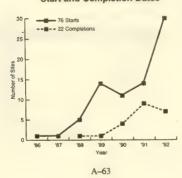
Removal and Remedial 259 Sites



Primary Funding 236 Sites



Start and Completion Dates



State/Territory—Pennsylvania

Pennsylvania reported 41 sites. Five of the sites had both Removal and Remedial actions, 32 had only Removal actions, and 4 had only Removal actions. For all 5 of the sites with both Removal and Remedial actions, the Remedial actions were Active. For all 4 of the sites with only Removal actions, all of the actions were Active. For the sites with only Removal actions, 11 were designated Ongoing and 21 were Complete.

The Predominant Remedy was Off-Site Treatment with 20 occurrences.

The one PRP cost reported was for a site that had only Removal actions that were Active; the reported cost was \$200,000. Twenty-one of the other sites with only Removal actions that were Complete had only State cost; the average cost per site was \$277,143. State cost of \$200,000 was also reported for one site with only Active Remedial actions. For the 5 sites with both Removal and Remedial actions, the State cost reported was \$2,100,000.

The **Primary Funding** source was the **State** at 34 of the 37 sites that reported **Primary Funding**.

All site completions have taken less than 2 years. The average **Duration of Response Actions** is 8 months and 15 days based on 25 sites that reported start and completion dates.

Pennsylvania prepares an annual report on its Hazardous Waste Cleanup Act. The last report was prepared on October 1, 1993, and covered the period from July 1, 1992, to June 30, 1993.

Data Display (Total Sites = 41)			
Removal	37	100.00%	
Ongoing	13	35.14%	
Complete	24	64.86%	
Remedial	9	100.00%	
Active	9	100.009	
No Further Action	0	0.009	
No Remedial Action Based on PA/SI or RI	0	0.009	
All Remedial Action Complete Except Operations/Maint.	0	0.009	
All Remedial Action Complete	0	0.009	
Last Remedial Phase	9	100.00%	
PA/SI	0	0.009	
RI/FS	9	100.009	
RD	0	0.009	
RA	0	0.009	
Predominant Remedies	28	100.009	
On-Site Treatment	1	3.589	
On-Site Containment	3	10.719	
Off-Site Containment	0	0.009	
Off-Site Treatment	20	71.439	
Population Protection	2	7.149	
Site Security	2	7.149	
Innovative Technology	0	0.009	
Total Cost		3,120,000.00	
State	\$7	,920,000.00	
Sites: 26 State Average: \$304,615.38 PRP		\$200,000.00	
Sites: 1 PRP Average: \$200,000.00			
Primary Funding	37	100.00	
State	34	91.89	
Federal Government	0	0.00	
Enforcement	3	8.11	
Voluntary/Property Transfer	0	0.00	
Duration of Response Actions	25	100.00	
Less Than 12 Months	16	64.00	
12–23 Months	9	36.00	
24–35 Months	0	0.00	
36–47 Months	0	0.00	
48–59 Months	U	0.00	

0

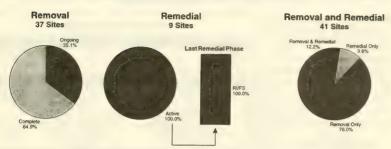
0.00%

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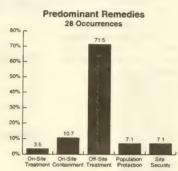
60-71 Months

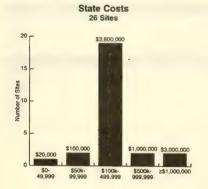
More Than 71 Months

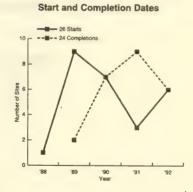
State/Territory—Pennsylvania



Primary Funding 38 Sites







State/Territory—Rhode Island

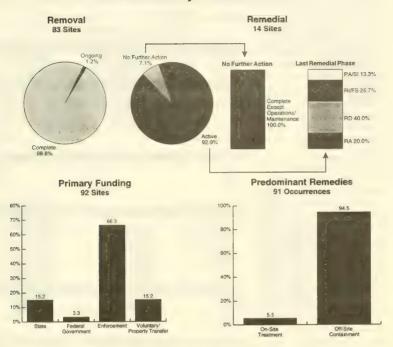
Rhode Island reported 97 sites. Eightythree sites had only Removal actions, and 14 sites had only Remedial actions. No sites had both Removal and Remedial actions. Eighty-two of the 83 sites with only Removal actions were designated as Complete. Thirteen of the 14 sites with only Remedial actions were designated as Active. The remaining site with only Remedial actions was designated as a construction completion.

The Predominant Remedy was Off-Site Containment with 86 occurrences. Enforcement was the prevalent Primary Funding source with 61 sites.

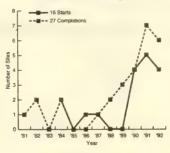
The average **Duration of Response Actions** was 13 months and 27 days
based on 10 sites reporting both start
and completion dates.

Data Display (Total Sites = 97)			
Removal	. 83	100.00%	
Ongoing	1	1.20%	
Complete	82	98.80%	
Remedial	14	100.00%	
Active	13	92.86%	
No Further Action	1	7.14%	
No Remedial Action Based on PA/SI or RI	0	0.00%	
All Remedial Action Complete Except Operations/Maint.	1	100.00%	
All Remedial Action Complete	0	0.00%	
Last Remedial Phase	15	100.00%	
PA/SI	2	13.33%	
RL/FS	4	26.67%	
RD	6	40.00%	
RA	3	20.00%	
Predominant Remedies	91	100.00%	
On-Site Treatment	5	5.49%	
On-Site Containment	0	0.00%	
Off-Site Containment	86	94.51%	
Off-Site Treatment	0	0.00%	
Population Protection	0	0.00%	
Site Security	0	0.00%	
Innovative Technology	0		
Total Cost		\$0.00	
State		\$0.00	
Sites: 0 State Average: \$0.00		\$0.00	
Sites: 0 PRP Average: \$0.00		•	
Primary Funding	92	100.00%	
State	14	15.22%	
Federal Government	3	3.26%	
Enforcement	61	66.30%	
Voluntary/Property Transfer	14	15.22%	
Duration of Response Actions	10	100.00%	
Less Than 12 Months	7	70.00%	
12-23 Months	0	0.00%	
24–35 Months	2	20.00%	
36-47 Months	0	0.00%	
48–59 Months	1	10.00%	
60–71 Months More Than 71 Months	0	0.00%	
MOTE THAIL / I MORUIS		0.0070	

State/Territory—Rhode Island



Site Starts and Completions



A-67

State/Territory—South Carolina

South Carolina reported 42 sites. Two of the sites had both Removal and Remedial actions, 17 had only Removal actions, and 22 had only Remedial actions. The 2 sites with both Removal and Remedial actions had Removal actions that were Complete and Remedial actions that were Active with PA/ SI as the Last Remedial Phase. Fourteen of the sites with only Removal actions were Complete, and 5 of the sites with only Remedial actions required No Further Action.

The most prevalent Predominant Remedies were Off-Site Containment with 19 occurrences and Off-Site Treatment with 14 occurrences.

All reported cost was State cost. The Total Cost for 35 sites was \$7,036.201. The total for 5 sites with only Remedial actions designated as requiring No Further Action was \$651,431. For the 102 sites with only Removal actions that were Complete the cost was reported as \$1,675,051

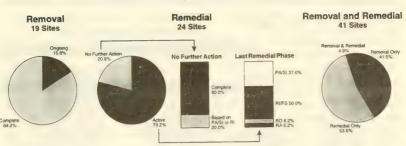
The Primary Funding source was the State with 22 sites, followed by Enforcement with 16 sites.

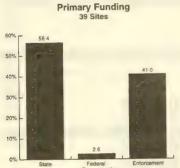
Seven sites were started prior to 1986, and 2 were complete. Fifteen sites had a Duration of Response Actions of Less Than 12 Months. The average Duration of Response Actions for 18 sites that reported start and completion dates was 5 months and 17 days.

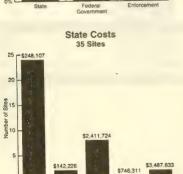
South Carolina has a Hazardous Waste Management Act, which was initiated in 1980.

Data Display (Total Sites = 42)			
Removal	19	100.00%	
Ongoing	3	15 79%	
Complete	16	84.21%	
Remedial	24	100.00%	
Active	19	79.17%	
No Further Action	5	20.83%	
No Remedial Action Based on PA/SI or RI	1	20.00%	
All Remedial Action Complete Except Operations/Maint.	0	0.00% 80.00%	
All Remedial Action Complete	4	80.00%	
Last Rémedial Phase	16	100.00%	
PA/SI	6	37.50%	
RI/FS	8	50.00% 6.25%	
RD	1	6.25%	
RA	1	0.2370	
Predominant Remedies	49	100.00°。	
On-Site Treatment	4	8.16%	
On-Site Containment	0	0.00%	
Off-Site Containment	19	38.78%	
Off-Site Treatment	14	28.57%	
Population Protection	0	22.45%	
Site Security Innovative Technology	1	2.04%	
Total Cost	. S7	,036,201.00	
State	\$7	,036,201.00	
Sites: 35 State Average: \$201,034.31			
PRP		\$0.00	
Sites: 0 PRP Average: \$0.00			
Primary Funding	39	100.00°	
State	22	56.41%	
Federal Government	1	2.56%	
Enforcement	16	41.03%	
Voluntary/Property Transfer	0	0.00%	
Duration of Response Actions	18	, 100.00°	
Less Than 12 Months	15	83.33%	
12-23 Months	3	16.67%	
24–35 Months	0	0.00%	
36–47 Months	0	0.00%	
48–59 Months 60–71 Months	0	0.00%	
More Than 71 Months	0	0.00%	

State/Terriitory—South Carolina



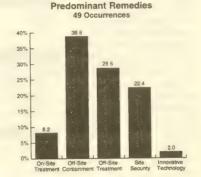


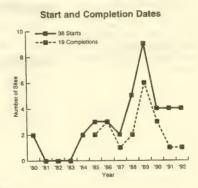


\$100k-499,999

\$50k-99,999

\$0-49,999





\$500k-999,999

State/Territory—South Dakota

South Dakota reported 674 sites. Sixty sites had only Remedial actions, and 614 sites had only Removal actions. No sites had both Removal and Remedial actions.

Nineteen of the 60 sites with only Remedial actions were designated as construction completions. The remaining 41 of the 60 sites with only Remedial actions were designated Active. Three hundred seventy-two of the 614 sites with only Removal actions were Complete, and the remaining 242 were Ongoing.

For the sites with Remedial actions that were Active, the most prevalent Last Remedial Phase was RI/FS.

The Predominant Remedy used for all 391 reported Predominant Remedy occurrences was Off-Site Contain-

The Primary Funding source was Enforcement at 653 sites, followed by the Federal Government at 21.

No cost was reported due to the fact that the South Dakota Department of Environment and Natural Resources does not keep record of this type of information; therefore, it is unavailable for review

In 1988, South Dakota passed legislation requiring the reporting of the activity and events at hazardous waste sites. As a result, South Dakota established a tracking system for corrective action details on sites used in this presentation

Data Display	(Total Sites	= 674)

	Ongoing	242	39.41%
	Complete	372	60.59%
	Remedial	60	100.00%
	Active	41	68.33%
	No Further Action	19	31.67%
	No Remedial Action Based on PA/SI or RI	0	0.00%
	All Remedial Action Complete Except Operations/Maint.	0	0.00%
	All Remedial Action Complete	19	100.00%
	Last Remedial Phase	41	100.00%
,	PA/SI	0	0.00%
	RL/FS	25	60.98%
	RD	9	21.95%
	RA	7	17.07%

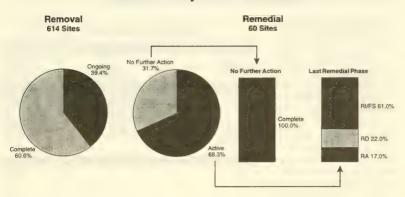
Predominant Remedies	391	100.00%
On-Site Treatment	.0	0.00%
On-Site Containment	0	0.00%
Off-Site Containment	391	100.00%
Off-Site Treatment	0	0.00%
Population Protection	0	0.00%
Site Security	0	0.00%
Innovative Technology	0	0.00%

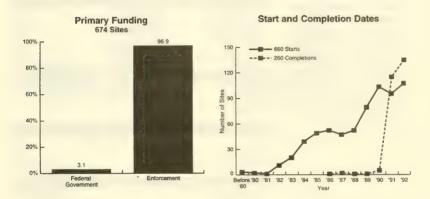
Total Cost		\$0.00
State		\$0.00
Sites: 0	State Average: \$0.00	
PRP		\$0.00
Sites: 0	PRP Average: \$0.00	

Primary Funding	674	100.00%
State	0	0.00%
Federal Government	21	3.12%
Enforcement	653	96.88%
Voluntary/Property Transfer	0	0.00%

Duration of Response Actions	₹ 212	100.00%
Less Than 12 Months	100	47.17%
12-23 Months	38	17.92%
24-35 Months	19	8.96%
36-47 Months	23	10.85%
48-59 Months	7	3.31%
60-71 Months	6	2.83%
More Than 71 Months	19	8.96%

State/Territory—South Dakota





State/Territory—Tennessee

Tennessee reported 244 sites. Four of the sites had both Removal and Remedial actions, 36 had only Removal actions, and 201 had only Remedial actions. All of the Removal actions were Complete. Four of the sites with both Removal and Remedial actions had the Removal actions Complete and the Remedial action requiring No Further Action. Of the 201 sites with only Remedial actions, 4 were classified as construction completions. PA/SI was the prevalent Last Remedial Phase for 153 of the 198 sites with Remedial actions that were Active that reported a Last Remedial Phase.

Off-Site Containment was the prevalent Predominant Remedy with 38 occurrences.

Total Cost was reported for 45 sites; 27 sites had both State and PRP cost, 2 sites had State cost only, and 16 sites had PRP cost only. The Total Cost for all sites was \$6.719.579.

Enforcement and the State were reported as the Primary Funding sources at 33 sites and 11 sites, respectively.

One site was started prior to 1980, and 13 sites were started from 1981 through 1985. Twelve sites were completed by the end of 1985.

Data Display (Total Sites = 244)			
Removal	40	100.00%	
Ongoing	0	0.00%	
Complete	40	100.00%	
Remedial	205	100.00%	
Active	198	96.59%	
No Further Action	7	3.41%	
No Remedial Action Based on PA/SI or RI	3	42.86%	
All Remedial Action Complete Except Operations/Maint.	0	0.00%	
All Remedial Action Complete	4	57.14%	
Last Remedial Phase	198	100.00%	
PA/SI	153	77.27%	
RI/FS	25	12.63%	
RD	14	7.07%	
RA	6	3.03%	
Predominant Remedies	56	100.00%	
On-Site Treatment	7	12.50%	
On-Site Containment	8	14.29%	
Off-Site Containment	38 1	67.86% 1.79%	
Off-Site Treatment Population Protection	0	0.00%	
Site Security	2	3.56%	
Innovative Technology	0	0.00%	
Total Cost		\$6,719,579.00	
State		\$2,200,526.00	
Sites: 43 State Average: \$51,175.02			
PRP		\$4,519,053.00	
Sites: 29 PRP Average: \$155,829.41			
Primary Funding	44	100.00%	
State	11	25.00%	
Federal Government	0	0.00%	
Enforcement	33	75.00% 0.00%	
Voluntary/Property Transfer	0	0.00%	
Duration of Response Actions	43	100.00%	
Less Than 12 Months	30	69.77%	
12-23 Months	8	18.60%	
24–35 Months	1	2.33%	
36–47 Months	4	9.30% 0.00%	
48–59 Months	U	0.00%	

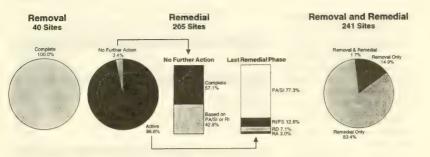
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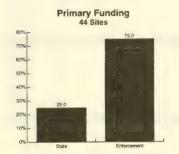
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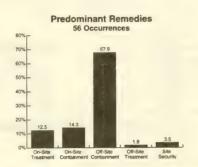
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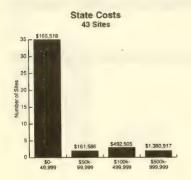
More Than 71 Months

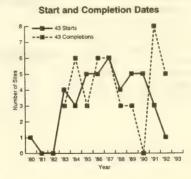
State/Territory—Tennessee











State/Territory—Texas

Texas reported 200 sites; 36 had both Removal and Remedial actions, 18 had only Removal actions, and 125 had only Remedial actions. Five of the sites with both Removal and Remedial actions had the Removal actions designated as Complete and the Remedial actions designated as requiring No Further Action. Additionally, one site with only Removal actions was designated Complete, and 5 of the sites with only Remedial actions were construction completions.

The most prevalent Predominant Remedies were Site Security with 40 occurrences and On-Site Treatment with 23 occurrences.

RIFS was the most prevalent Last Remedial Phase for sites with Remedial actions that were Active. It was reported for 89 sites and PA/SI was reported for 56 sites.

Sixteen sites reported cost for a total of \$17,464,000. Thirteen sites had only State cost totaling \$9,114,000, and 3 sites had PRP cost totaling \$8,350,000. The Primary Funding source was Enforcement with 67 of the 95 sites that reported a Primary Funding source. The State as the Primary Funding source was reported at 15 sites.

Approximately 1,900 additional sites had been referred to the State by the Federal Government, and these sites were currently under eligibility review. Also, another 20 abandoned industrial disposal sites and 88 State-funded emergency Removal actions were Complete. None of these approximately 2,008 sites are in the database and subsequent displays.

Data Display (Total Sites = 200)			
Removal	54	100.00%	
Ongoing	39	72.22%	
Complete	15	27.78%	
Remedial	161	100.00°	
Active	151	93.79%	
No Further Action	10	6.21%	
No Remedial Action Based on PA/SI or RI	0	0.00%	
All Remedial Action Complete Except Operations/Maint.	7	70.00%	
All Remedial Action Complete	3	30.00%	
Last Remedial Phase	172	100.00%	
PA/SI	56	32.56%	
RI/FS	89	51.74%	
RD	13	7.56%	
RA	14	8.14%	
Predominant Remedies	86	100.00%	
On-Site Treatment	23	26.74%	
On-Site Containment	9	10.47%	
Off-Site Containment	12	13.95%	
Off-Site Treatment	2	2.33%	
Population Protection Site Security	40	46.51%	
Innovative Technology	0	0.00%	
		17,464.000.00	
Total Cost			
State 5701 076 02		\$9,114,000.00	
Sites: 13 State Average: \$701,076.92		\$8,350,000.00	
Sites: 3 PRP Average: \$2,783,333.33			
Primary Funding	95	100.00%	
State	15	15.79%	
Federal Government	4	4.21%	
Enforcement	67	70.53%	
Voluntary/Property Transfer	9	9.47%	
Duration of Response Actions	·- 2	. 100.00%	
Less Than 12 Months	2	100.00%	
12-23 Months	0	0.00%	
24–35 Months	0	0.00%	
36–47 Months	0	0.00%	
48–59 Months	U	0.00%	

0.00%

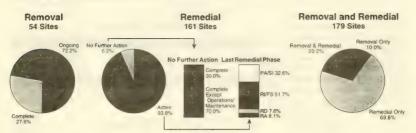
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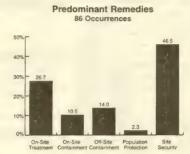
60-71 Months

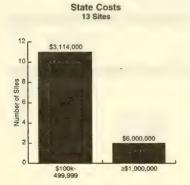
More Than 71 Months

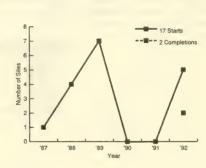
State/Territory—Texas











Start and Completion Dates

State/Territory—Utah

Utah reported 31 sites. One site had both a Removal and Remedial actions. Six sites had only Removal actions, and 24 had only Remedial actions. The 1 site with both Removal and Remedial actions had the Removal actions reported as Complete and the Remedial action reported as Active, with the Last Remedial Phase being PA/SL For 5 of the sites with only Removal actions, all the actions were designated Complete. For 1 site with only Remedial actions, the designation was No Remedial Action Based on PA/SI or RI.

The most prevalent **Predominant**Remedies were On-Site Containment
and Off-Site Containment with 9 and
6 occurrences, respectively.

The Total Cost reported was \$14,130,389, segmented by State at \$130,389 and PRP at \$14,000,000. The total number of sites with reported cost was 5. One site with only Removal actions that were Complete had a PRP cost of \$12,000,000. One site with both Removal and Remedial actions had a State cost of \$75,845. Three sites with only Remedial actions that were Active had reported cost as follows: State \$7,000 and PRP \$2,000,000; State \$27,398; and State \$20,146.

One site was started prior to 1986. The average **Duration of Response Actions** for 10 sites with reported time frames was 13 months and 12 days.

Data Display	(Total	Sites	= 31)
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Ungoing	1	14.29%
Complete	6	85.71%
Remedial	25	100.00%
Active	24	96.00%
No Further Action	1	4.00%
No Remedial Action Based on PA/SI or RI	1	100.00%
All Remedial Action Complete Except Operations/Maint.	0	0.00%
All Remedial Action Complete	0	0.00%

Last Remedial Phase	22	100.00%
PA/SI	3	13.64%
RI/FS	8	36.36%
RD	8	36.36%
RA	3	13.64%

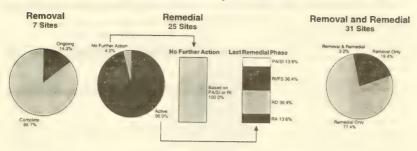
Predominant Remedies	20	. 100.00%
On-Site Treatment	2	10.00%
On-Site Containment	9	45.00%
Off-Site Containment	6	30.00%
Off-Site Treatment	1	5.00%
Population Protection	0	0.00%
Site Security	2	10.00%
Innovative Technology	0	0.00%

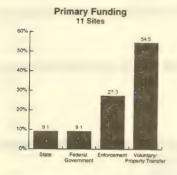
Total Cost		S14.130.389.00
State		\$130,389.00
Sites: 4	State Average: \$32,597.25.00	
PRP	PPP Average: \$7,000,000,00	\$14,000,000.00

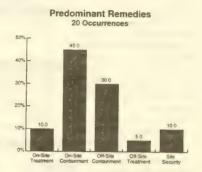
Primary Funding	11	100.00%
State	1	9.09%
Federal Government	1	9.09%
Enforcement	3	27.27%
Voluntary/Property Transfer	6	54.55%

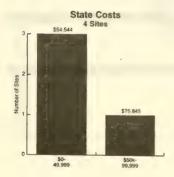
Duration of Response Actions	10	100.00%
Less Than 12 Months	5	50.00%
12-23 Months	3	30.00%
24-35 Months	2	20.00%
36-47 Months	0	0.00%
48-59 Months	0	0.00%
60-71 Months	0	0.00%
More Than 71 Months	0	0.00%

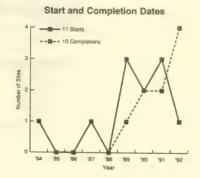
State/Territory—Utah











A-77

State/Territory—Virginia

Virginia reported 21 sites. Twenty of the sites had only Ongoing Removal actions, and 1 site had only Remedial actions, which was designated a construction completion.

The site with only Remedial actions had State cost of \$500,000. One site with only Removal actions had State cost of \$2,000,000.

All 21 sites were started from 1987 through the end of 1992. The 1 construction completion site was completed within that time window.

Virginia also had sites with Removal actions that were Complete. However, the data for these sites as well as the detailed data on Predominant Remedies, Primary Funding, and Duration of Response Actions was not available due to the stringent time constraints imposed by the study. Thus, the zero notations represent unavailable data rather than no data.

Virginia has a Waste Management Act that was amended in 1993. The act provides regulations for the safe control and management of hazardous waste substances and for the enforcement of noncompliance with the regulations.

But Birds (F. 110)		
Data Display (Total Sites = 2	21)	
Removal	20	100.00%
Ongoing	20	100.00%
Complete	0	0.00%
Remedial	1	100.00%
Active	0	0.00%
No Further Action	1	100.00%
No Remedial Action Based on PA/SI or RI	0	0.00%
All Remedial Action Complete Except Operations/Maint.	0	0.00%
All Remedial Action Complete	1	100.00%
Last Remedial Phase	0	100.00%
PA/SI	0	0.00%
RI/FS	0	0.00%
RD	0	0.00%
RA	0	0.00%
Predominant Remedies	0	100.00%
On-Site Treatment	0	0.00%
On-Site Containment	0	0.00%
Off-Site Containment	0	0.00%
Off-Site Treatment	0	0.00%
Population Protection	0	0.00%
Site Security	0	0.00%
Innovative Technology	0	0.00%
Total Cost	\$2	.500,000.00
State	\$2	,500,000.00
Sites: 2 State Average: \$1,250,000.00		
PRP Sites: 0 PRP Average: \$0.00		\$0.00
Primary Funding	0	100.00°c
State Federal Government	0	0.00%
Enforcement	0	0.00%
Voluntary/Property Transfer	0	0.00%
Duration of Response Actions	0	100.00°
Less Than 12 Months	0	0.00%
12–23 Months	0	0.00%
24-35 Months	0	0.00%
36-47 Months	0	0.00%

0

Ð

0.00%

0.00%

0.00%

48-59 Months

60-71 Months

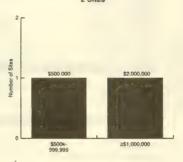
More Than 71 Months

State/Territory-Virginia

Removal and Remedial 21 Sites



State Costs 2 Sites



State/Territory—Washington

Washington reported 1,220 sites. Fortyone had both Removal and Remedial actions, 5 had only Removal actions, and 340 had only Remedial actions. The remaining 834 were defined as "independent" sites undergoing cleanup without State oversight or involvement.

The total number of sites with Removal actions was reported as 46, where 19 of these sites had Removal actions that were Complete. The sites with Remedial actions totaled 381, with 210 of these sites having designated the Remedial actions as requiring No Further Action. Of the 210 No Further Action sites, 134 were further designated as construction completions.

The prevalent Last Remedial Phase for sites with Remedial actions that were Active was PA/SI with 291 sites.

The Predominant Remedy was On-Site Containment with 24 occurrences.

State cost was \$10,944,364 for 131 sites. Ninety-eight of these sites had individual cost of less than \$50,000. The total for the 98 sites was \$1,475,200.

Twenty-eight sites reported start and completion dates. The average **Duration of Response Actions** for these sites was 12 months and 25 days.

Data Display (Total Sites = 1,220)									
Removal	46	100.00° 0							
Ongoing	27	58.70%							
Complete	19	41.30%							
Remedial	381	100.00°,a							
Active	171	44.88%							
No Further Action	210	55.12%							
No Remedial Action Based on PA/SI or RI	76	36.19%							
All Remedial Action Complete Except Operations/Maint.	29	13.81%							
All Remedial Action Complete	105	50.00%							
Last Remedial Phase	372	100.00° o							
PA/SI	291	78.23%							
RI/FS	60	16.13%							
RD	6	1.61%							
RA	15	4.03%							
Predominant Remedies	85	100.00°。							
On-Site Treatment	15	17.65%							
On-Site Containment	24	28.24%							
Off-Site Containment	15	17.65%							
Off-Site Treatment	13	15.28%							
Population Protection	14	16.47%							
Site Security	4	4.71%							
Innovative Technology	0	0.00%							
Total Cost		.944.364.00							
State	\$10	,944,364.00							
Sites: 131 State Average: \$83,544.76		\$0.00							
Sites: 0 PRP Average: \$0.00									
Primary Funding	0	100.00° :							
State	Ö	0.00%							
Federal Government	0	0.00%							
Enforcement	0	0.00%							
Voluntary/Property Transfer	ō	0.00%							
Duration of Response Actions	25	100.00° s							
Less Than 12 Months	18	64.29%							
12-23 Months	6	21.43%							
24–35 Months	1	3.57%							
36–47 Months	1	3.57% 3.57%							
48–59 Months	1	3.57%							

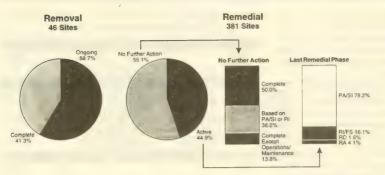
3.57%

0.00%

15

More Than 71 Months

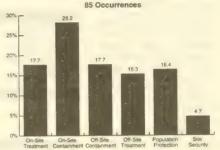
State/Territory—Washington



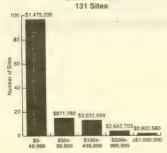
Removal and Remedial 386 Sites



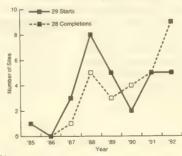
Predominant Remedies



State Costs



Start and Completion Dates



A-81

State/Territory—Wisconsin

Wisconsin reported 1,849 sites. Two hundred twenty-two of these sites had only Removal actions, and 1,627 had only Remedial actions. None of the sites had both Removal and Remedial actions.

All of the Removal actions were Complete, and 275 of the sites with only Remedial actions were designated construction completions. Of the 1,352 sites with Remedial actions that were Active, RUFS was the most prevalent Last Remedial Phase.

Enforcement was the Primary Funding source with 406 sites. However, Wisconsin combines the reporting of Enforcement with Voluntary/Property Transfer and has stated that the total for this combined group is 1,907. Wisconsin has also stated that the total sites with the State as the Primary Funding is 42. Detailed site data on these stated figures is not available at this time. Wisconsin is developing a more comprehensive tracking system and provided this information based on an interim tracking system that is unable to provide the detailed data required for this study

State costs of \$939,021 were reported for 183 sites. One hundred seventy-nine of these sites had a per site cost of less than \$50,000 for a total of \$635.757.

Two sites were started prior to 1980, and 17 sites were started in the years 1980 through 1985. Eleven sites were completed prior to 1986. Eighty sites have a Duration of Response Actions of Less Than 12 Months. The Duration of Response Actions was 15 months and 19 days based on 126 sites reporting start and completion dates.

Data Display (Total Sites = 1	,849)	
Removal	222	100.00°。
Ongoing	0	0.00%
Complete	222	100.00%
Remedial	1.627	100.00° s
Active	1,352	83.10%
No Further Action	275	16.90%
No Remedial Action Based on PA/SI or RI	0	0.00%
All Remedial Action Complete Except Operations/Maint.	0	0.00%
All Remedial Action Complete	275	100.00%
Land Dame diet Dhann	470	400.000
Last Remedial Phase	179	100.00°。
PA/SI	36	20.11%
RI/FS RD	110	61.45%
RA	31	17.32%
ICA	31	11.52%
Predominant Remedies	0	100.00°。
On-Site Treatment	0	0.00%
On-Site Containment	0	0.00%
Off-Site Containment	0	0.00%
Off-Site Treatment	0	0.00%
Population Protection	0	0.00%
Site Security	0	0.00%
Innovative Technology	0	0.00%
Total Cost		\$939.021.00
State		\$939,021.00
Sites: 183 State Average: \$5,131.26		
PRP Sites: 0 PRP Average: \$0.00		\$0.00
Sites. 0 PRF Average. 30.00		
Primary Funding	418	100.00%
State	12	2.87%
Federal Government	0	0.00%
Enforcement	406	97.13%
Voluntary/Property Transfer	0	0.00%
Duration of Response Actions	126	100.00°°
Less Than 12 Months	80	63.49%
12-23 Months	22	17.46%
24–35 Months	12	9.52%
36–47 Months	2	1.59%
48–59 Months	4	3.17%
60-71 Months	0	0.00%

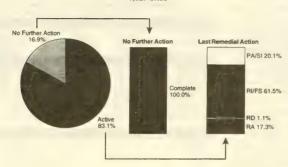
6

4.76%

More Than 71 Months

State/Territory—Wisconsin

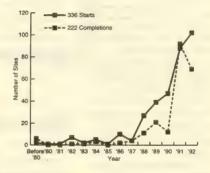
Remedial 1,627 Sites



Primary Funding 418 Sites

97.1 80% - 97.1 40% - 20% - 2.9 State Enforcement

Start and Completion Dates



State/Territory

The States and Territories reported a total of 21,905 sites, with 1,017 having neither a Removal nor a Remedial status. These 1,017 sites represent sites such as those on Indian reservations, which are known but are not under the direct jurisdiction of a State or Territory. Of the remaining 20,883 sites, 8,421 were Removal and Remedial sites, 1,371 were sites with only Removal actions, and 11,096 sites were sites with only Remedial actions.

The total number of Removal sites was 9,792, with 3,527 completed as of December 31, 1992. The total number of Remedial sites was 19,517 with 2,689 construction completion—i.e., the total of All Remedial Action Complete Except Operations and Maintenance (260) and All Remedial Actions Complete (2,429).

The most prevalent Last Remedial Phase was Remedial Investigation or Feasibility Study (RI/FS), with 4,834 of the 9,662 Active Remedial sites reporting a Last Remedial Phase.

The three key Predominant Remedies were Off-Site Containment with 2,438, On-Site Containment with 599, and On-Site Treatment with 455.

Total Cost of \$1,205,531,234 was reported for 3,395 sites, with the cost represented by State cost of \$650,000,770 for 2,167 of the sites and PRP cost of \$555,530,464 for 1,385 of the sites.

A Primary Funding source was reported for 11,778 sites, with Voluntary/Property Transfer representing 6,448 of them. Enforcement was the Primary Funding source on a national level with 3,692 sites.

Duration of Response Actions reported for 6,052 sites had an average of 13 months and 15 days.

National Data Summary (Total Sites = 21,905)

Ongoing	6,265	63.98%
Complete	3,527	36.02%
Remedial	19.517	100.00°。
Active	11,000	56.36%
No Further Action	8,517	43.64%
No Remedial Action Based on PA/SI or RI	5,828	68.43%
All Remedial Action Complete Except Operations/Maint.	260	3.05%
All Remedial Action Complete	2,429	28.52%

Last Remedial Phase	9,662	100.00%
PA/SI	3,887	40.23%
RI/FS	4,834	50.03%
RD	571	5.91%
RA	370	3.83%

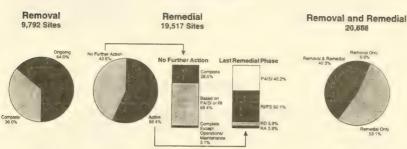
Predominant Remedies	4,005	100.00%
On-Site Treatment	455	11.36%
On-Site Containment	599	14.96%
Off-Site Containment	2,438	60.87%
Off-Site Treatment	238	5.94%
Population Protection	67	1.67%
Site Security	197	4.92%
Innovative Technology	11	0.28%

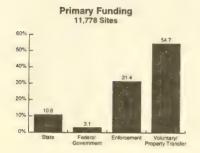
Total Cost		\$1.205.531.234.00
State		\$650,000,770.00
Sites: 2,167	•	
	State Average: \$299,954.21	
PRP		\$555,530,464.00
Sites: 1,385		
	State Average: \$401,105.03	

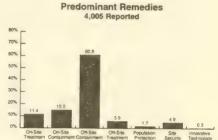
Primary Funding	11.778	100.00%
State	1,273	10.81%
Federal Government	365	3.10%
Enforcement	3,692	31.35%
Voluntary/Property Transfer	6,448	54.74%

Duration of Response Actions	6.052	100.00%
Less Than 12 Months	4,261	70.40%
1223 Months	. R58	14.18%
24-35 Months	356	5.88%
36-47 Months	246	4.06%
48-59 Months	125	2.07%
60-71 Months	73	1.21%
More Than 71 Months	133	2.20%

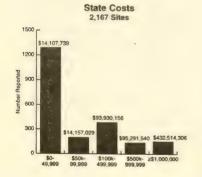
State/Territory

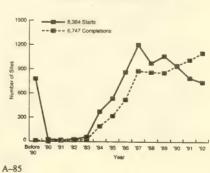






Start and Completion Dates





APPENDIX B ASTSWMO Data Matrix Form



444 North Capitol Street, N.W., Surte 388 Washington, D.C. 20001 tel: (202) 624-5828 fax: (202) 624-7875

July 8, 1993

Dear State Superfund Managers:

Attached please find the matrix for the Non-NPL accomplishments study being conducted by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). Per my May 27, 1993 letter, ASTSWMO is conducting this study to more adequately determine the actual scope of State involvement in the cleanup of non-NPL sites. In addition to the useful comparative information for State program use, the results of this study can be used to justify the position that the state role in Superfund should be enhanced. As you may know, there currently are no figures on the actual number of cleanups being performed under State auspices and State capabilities have increased dramatically in the last thirteen years. We think this information will be especially useful during the current CERCLA reauthorization debate.

Therefore, we are asking you to compile information on completed State non-NPL cleanups cumulative from FY 80 (or earliest year your State had a program) through December 31, 1992 along with the status of the State's current non-NPL cleanup workload. The study will include hazardous waste cleanups performed by States directly, under State enforcement authority and under State Voluntary and Property Transfer programs. RCRA Corrective Actions, underground and above ground storage tanks and petroleum spills will be excluded. Directions for completing the matrix have been included.

Timeframe. We are requesting that you complete the matrix and submit it to the ASTSWMO office (attention Kris Hoellen) by Tuesday, August 31, 1993. This is a rather crucial date as we wish to have a completed report by October 1, 1993. We understand that Congress plans to begin hearings on the State role in Superfund early this Fall. EPA plans to submit legislative recommendations to Congress in September/October of this year. Consequently, in order to gain the most benefit and impact from this study, a report will have to be produced by early Fall. The more completed matrixes we receive prior to August 31, the more likelihood we have of seeing a positive Superfund reauthorization.

Contractor assistance. U.S. EPA is procuring a contractor who will be available to assist States in completing the matrix. If your State will require contractor assistance, please notify the ASTSWMO office A.S.A.P. (202)624-5828, as the contractor resources are limited. Requests for assistance will be provided on a first come first served basis. The contractor will begin work on the project in late July/early August. Hence, for those states requiring



assistance, the more work which can be accomplished ahead of time, the greater the chances will be for meeting the August 31, 1993 deadline. The contractor's primary responsibility on this project, however, will be to create a database and to prepare a summary report of the results. NOTE: ASTSWMO does have approval authority of the final report prior to its release.

Data transmittal. In order to have the most accurate data, we strongly recommend that you submit your information via one of the following mechanisms: 1) if your data is already entered into a database, please contact the ASTSWMO office about downloading the data into a format we can read; 2) if you wish to complete your matrix electronically, contact the ASTSWMO office to receive a database program format; or 3) please complete the form by hand as neatly and clearly as possible.

Finally, we appreciate your efforts in ensuring the success of this project. Kris Hoellen of ASTSWMO and I will be available throughout the duration of the project to answer specific questions on the completion of the matrix. This project is probably unprecedented in the amount of teamwork required, as the results will only be beneficial if all the states participate. We thank you for your support. If you have any questions concerning the purpose of the project, please do not hesitate to contact me at 609/292-1250.

Sincerely,

Lance K. Mille.

Lance R. Miller, NJ ASTSWMO Board of Director - Region II

available (Please contact us for database structure information). Coding guidance for each of the matrix categories is included to assist you in completing the form. In an effort to quantify state and tertitorial clean-up accomplishments, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) is conducting a study to determine the total number of non-NPL sites remediated by states. Additionally, information is being collecting on the sites that are in the process of being remediated. We are targeting those state sites completed from 1980, or the earliest year your state had a program, through Calendar Year 1992. NOTE: the study does not include RCRA, UST and Petroleum contaminated sites. If you have questions about categorizing a particular site, please confact Kris matrix on Page 3 should be used to identify and provide data about each non-NPL site (removal and remedial). Computer data files are strongly encouraged, if Hoellen at ASTSWMO (202) 624-5828 or Lance Miller at NJDEPE (609) 292-1250 for assistance in completing the matrix.

II. Matrix Coding Guidance

Please use the following guidance to categorize your response to each question:

- Sequential site number: Number your sites sequentially. This will be used in the event that we need to call and clarify information about a specific site.
- Site Name/Location/Unique state identifier: List the name of the site and provide location. An example of location might read street address, city, county, zip code. Include state data base number, if available.
- Site status: Please identify cach non-NPL site, using the following categories within the Removal and Remedial columns:

Removal (Choose no more than one)

Removal is ongoing

B-4

Removal has been completed (Complete columns 5-8) Remedial (Choose no more than one)

Active Sites: Those sites that are in any stage of remediation (Complete column 4)

No Further Action Sites—all remedial action has been completed, except Ongoing Operations and Maintenance (Complete columns 5-8) No Further Action Sites—no remedial action was needed based on PA/SI or RI (Complete columns 5-8) No Further Action Sites—all remedial action has been completed (Complete columns 5-8) Last remedial phase, if ongoing. If the site is an active remedial site (Item 3c above), circle the appropriate letter that corresponds to the current phase of remediation as follows (Choose no more than one):

RUFS: The phase to determine nature and extent of contamination, obtain information needed to evaluate alternatives, and develop options for remedial action. PASI: The site assessment phase to characterize the site to determine whether remedial action is needed. PASI is complete, but RI has not begun. The Remedial Investigation or Feasibility Study is complete, but Remedial Design has not yet started.

RD: The phases in which the selected remedy is designed. Remedial Design is complete, but Remedial Action has not yet started.

RA: Remedial Action is completed, but site activities, other than Operations and Maintenance, are ongoing.

ASTSWMO Survey of the State's Non-NPL Removal and Remedial Accomplishments

Predominant Remedies, if complete: Use the list below to identify the major types of remediation used at the site. The eight primary categories are listed, with additional treatments that fall into each category. Please be as specific as possible (i.e., use a1, c5). List only those most significant to the site (Choose no more than six).

	d. Off-Site Treatment includes:	dl. Incineration and Disposal	d2. Pump and treat at POTW with discharge	d3. pH neutralization - off-site	d4. Removal for off-site treatment	d5. Thermal treatment with disposal of residuals	e. Population Protection includes:	el. Alternate Water Supplied (permanent or temporary	water provided or water supply reinstated)	e2. Population Relocated (permanent or temporary	relocation or population returned)	f. Site Security includes:	fl. Fence	f2. Guards	f3. Deed restrictions	g. Innovative technology		
	 b. On-Site Containment includes: 	bl Surface capping	 Surface capping with slurry wall 	b3. Soil cover	b4. Excavation and on-site containment	 Encapsulation or overpacking with final on-site 	disposal	b6. Surface drainage control	b7. Solidification and stabilization	b8. Slurry wall	Off. Site Containment includes:	cl. Excavation and final removal to off-site landfill	c2. Encapsulation or overpacking with final off-site	disposal	c3. Final removal to off-site landfill			
Trees on the second	a On-Site Treatment includes: b.		Soil aeration technologies	2. Biodegradation	3. Detonation	4. Incineration with on-site disposal of residual	5. Incineration with off-site disposal of residual	5. pH neutralization	7. Component separation	3. Thermal treatment with on-site placement of	ئ	3. Thermal treatment with off-site disposal	10. Removal to off-site locations after on-site treatment	Groundwater	all. Air stripping technologies	12. Leachate treatment	 Pump and treat, on-site disposal 	al4. Pump and treatment, off-site discharge
	cd	V.												0				

- Total costs (non-federal): Provide total expended dollars to clean up the site. Include study, construction and O&M costs. Provide only known state or PRP costs, do not include federal funds. Specify "Not Known" if funds were spent but amounts are not known. ض B-5
- Primary Funding source: Circle the letter corresponding to the appropriate primary funding source, defined as follows (Choose only one):
- Financed by State funds
- b. Financed by Federal Government (e.g., removals)
- Enforcement: Funding provided by a PRP or other private source under an enforceable document and not part of a voluntary cleanup program
- Voluntary: Classify as defined by your state
 Property Transfer: Those cases in which the parties involved in selling and buying property agree to finance the cleanup, prior to transferring the property
- Dates and Duration: If a Remedial Action was completed at the site, provide the date (mm/dd/yy) in which you started the RI, the date on which the construction removal. If both a Remedial Action and Removal Action were completed at the site, provide only the Remedial Action dates. If you do not know the exact start was completed, and the resulting total duration of the project in months. If only a Removal action was completed, provide the start and completion dates for the and complete dates, estimate the time It took to complete the removal or remediation. 00

Note: Please send a copy of your state's most recent annual report and environmental laws, if available.

ASTSWMO Survey of the State's Non-NPL Removal and Remedial Accomplishments

III. Site Listing and Status Matrix Please write your response to each question in the space provided. For questions three, four and seven, circle the appropriate letter.

y) & nths)		Duration		Duration		Durailim		Duration		Duration		Duration		Duration
Dates (mm/dd/yy) & Duration (in months)		Complete												
8. Date Dura		Stan		Start		Start		Start		Stari		Start		Start
7. Primary Funding source	a b	o p o	a b	c d e	a b	o p o	a b	o p o	a b	o q e	a b	c d e	62	c d e
its (non- PRP												-		
6. Total costs (non- Fed't.) State PR														
5. Predominant remedies, if complete														
4. Last Remedial phase, if ongoing	a b	b o	a b	c d	ар	p o	a b	c d	a b	c d	a b	рэ	a b	p o
temedial	p o	e f	рэ	J o	p o	c f	p o	e f	p o	e f	b o	ن ن	p o	e f
3. Site state Removal	a b		a b	-	8		a b		a b		a b		a b	
Sequential 2. Sits nameA.ocation/Unique state identifier 3. Site status site number Removal B														
Sequential site number														

Page 3

Phone

Form completed by

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 Your Source to U.S. and Foreign Government Research and Technology. Mr. APPLEGATE. Mr. Barcia, anything further?

Mr. BARCIA. No, thank you very much, Mr. Chairman, for this

very informative subcommittee meeting today.

Mr. APPLEGATE. Again, thank you very much for being here. Sorry for the lateness of the hour, but that is the way these things go. But we appreciate your coming before the committee, and we will look forward to getting some more information from you, and we will submit some questions and hope that you will give us a fast answer. Thank you very much.

And the meeting is adjourned.

[Whereupon, at 5:43 p.m., the subcommittee was adjourned.]



PREPARED STATEMENTS OF WITNESSES

Statement
of
Sue M. Briggum
Director, Government Affairs
WMX Technologies, Inc.

Before the

Water Resources and Environment Subcommittee
Public Works Committee
U.S. House of Representatives

July 11, 1994

Good afternoon Mr. Chairman and Members of the Subcommittee. I am Sue Briggum, Director of Government Affairs for WMX Technologies, Inc. (formerly Waste Management, Inc.). WMX is a member of the Advocates for Prompt Superfund Reform, a 60-member group composed of large, medium and small businesses, insurers, the financial community, and local governments. We are working, aligned with environmentalists and community activists, in support of passage of H.R. 3800. We believe this bill reflects extraordinary efforts by a broad, bi-partisan group to make substantial, realistic reforms to the Superfund program.

Our coalition supports the approach to ground water protection in H.R. 3800. We understand the bill to be based on 14 years of EPA experience under Superfund, much of which is very well described in the recently released report of the National Research Council on "Alternatives for Ground Water Cleanup." Superfund's current approach to ground water cleanup is premised on respect for the importance of ground water as a resource for the future, but it also recognizes that there must be flexibility to address real world problems in attaining desired levels of protection. If Members of this Committee find that H.R. 3800 could be misread to limit the flexibility available in EPA's current guidance, our group would be eager to work with you on ways to clarify that language and to sustain a balanced consensus of the business and environmental community.

Some have voiced concern about this bill's goal of requiring ground water cleanup to a safe level not only when the resource is used now for drinking water, but also if the water could ever be used for drinking. We do not share this concern but instead concur with H.R. 3800's goal of preserving usable ground water for future generations. Ground water use is much harder to predict than land use. It is difficult

to accurately characterize the transport of contamination in ground water and the impact of contamination throughout an aquifer. The reliability of institutional and engineering controls to contain ground water movement is not well tested. As a consequence, we have serious reservations about knowingly allowing vast amounts of contamination to be isolated within ground water resources on the expectation that technology and money will be available for cleanup in the distant future.

We do support assuring that EPA has sufficient flexibility in implementing Superfund's cleanup goals to recognize practical scientific and engineering realities. These realities are very well described in the National Research Council report. I would like to mention today several topics referenced in that report that should continue to guide EPA's practice:

- Some ground water restorations can be achieved in a reasonable time frame for a reasonable cost. In some circumstances, usually relatively simple sites, conventional pump-and-treat systems can be effective. In addition, as stated in the NRC report: "Natural attenuation may be acceptable for some zones where it can be shown that natural biological, chemical and physical processes will lower contaminant concentrations to cleanup goals before the contaminants reach receptors; it may also be acceptable for ground water that discharges into surface water bodies where it can be demonstrated that the ground water will not be used and the resulting concentrations in the surface water body will be below applicable standards." In these situations, it makes no economic or environmental sense to require installation of barriers and aggressive treatment measures based on an arbitrary point of compliance.

 EPA should have flexibility to reasonably consider time and distance when implementing its cleanup goals.
- Some sites cannot be remediated using current ground water technology; sites with DNAPLs (Dense Nonaqueous Phase Liquids) are the most obvious examples. At these sites where substantial amounts of contamination cannot be addressed with current technology, it makes sense to implement interim containment, to recognize technical infeasibility prior to construction of a full-scale cleanup system, ² and for EPA to accelerate its efforts to stimulate the development of better technology. The NRC report has a number of very useful suggestions on how this might be accomplished.

¹ National Research Council, "Alternatives for Ground Water Cleanup," page 183 (June 1994) (prepublication copy) ("NRC Report").

² NRC Report, page 238, 245.

We should make better use of a phased approach to implementing ground water technology. What is known as "the observational method" relies on phased implementation of a sensible remedial approach. Early actions such as removal of severely contaminated water, access restrictions and source control are implemented as quickly as feasible. The site is monitored to chart the success of these controls. Full site characterization and design of any needed ground water treatment system follows. This phasing permits sensible, cost-effective control measures to be implemented without waiting for complex hydrogeological studies to be completed. It also allows ground water hydraulics and chemistry to stabilize before a treatment plant is designed and built. This facilitates proper sizing and type of treatment technology.

Again, we believe it is the intent of H.R. 3800 to recognize practical engineering and technological realities within the context of preserving ground water wherever it can be used in the future. If the Committee determines that this intent could be more clearly expressed, we would be happy to assist in any effort to draft language for this purpose.

This concludes my statement. I would be happy to answer any questions.

TESTIMONY OF LESLIE CAROTHERS, VICE PRESIDENT, ENVIRONMENT, HEALTH AND SAFETY UNITED TECHNOLOGIES CORPORATION

ON BEHALF OF THE
ELECTRONIC INDUSTRIES ASSOCIATION
NATIONAL ASSOCIATION OF MANUFACTURERS
NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION
SEMICONDUCTOR INDUSTRY ASSOCIATION

FOR THE
HOUSE PUBLIC WORKS AND TRANSPORTATION
WATER RESOURCES AND ENVIRONMENT
SUBCOMMITTEE
SUPERFUND HEARING

JULY 12, 1994

Good afternoon, Mr. Chairman and members of the subcommittee. I am Leslie Carothers, Vice President of Environment, Health and Safety for United Technologies Corporation (UTC). My testimony today reflects the views of UTC, the Electronic Industries Association, the National Association of Manufacturers, the National Electrical Manufacturers Association and the Semiconductor Industry Association. On behalf of these associations and their member companies, thank you for this opportunity to address the critical issue of ground water cleanup standards and remedy selection.

The Superfund Reform Act of 1994 (HR 3800/S 1834) represents a great deal of hard work and the sincere interest of the affected parties to reach agreement on this critical piece of legislation. Our mutual objective is to ensure that: 1.) changes made to the existing program accelerate the pace of cleanup and 2.) that cost effective remedies protective of human health and the environment are selected and implemented. In our efforts to achieve meaningful and comprehensive Superfund reform, we must not ignore ground water.

In summary: We need to reform existing practice that assumes virtually all ground water represents a potential source of drinking water and therefore must be remediated to meet drinking water standards. Today, ground water remediation is commonly the largest, and in many cases, the least cost-effective cleanup expenditure we make.

Consistent with other provisions of HR 3800, which recognize that remedy selection and cleanup standards for soil must be based on the reasonably anticipated use of the land involved, we must examine the reasonably anticipated uses of ground water to determine the appropriate cleanup level and select the appropriate remedy.

Without changes in the bill to accomplish this objective, we will have failed in our mission to achieve meaningful Superfund reform. We are willing to work to ensure a satisfactory resolution of this issue.

Let me stress at the outset that the adoption of drinking water standards as a goal for cleanup of ground water contamination caused by releases from new landfills, leaking tanks, or current spills is appropriate to promote good practice and to protect the environment. But we think it is a different matter to set such a goal for remediation of ground water under the nation's inventory of old dumps and disposal sites operated under what we all now recognize as the inadequate environmental standards of the past. The difficulty and cost of achieving such a goal for sites operated under the old rules simply demand that we focus our attention on groundwater resources that are truly needed for drinking water use in the reasonably foreseeable future.

My own history with the Superfund program began in 1979 when I was an official in EPA Region I, detailed to Washington to help develop a program to deal with what we then called abandoned sites. In addition to my 12 years at EPA, I served as Commissioner of Connecticut's Department of Environmental Protection from 1987 to 1991. I have worked with this program in both the public and private sectors for fifteen years. I am an environmentalist and want the Superfund program to work.

UTC's environmental cleanup experience is similar to many other U. S. manufacturers. After disposing of our wastes in a manner consistent with legal practices of the day, we now find ourselves responsible for cleanup activities at numerous disposal sites. In UTC's case, our Superfund sites involve current as well as discontinued operations, with many in the latter category. As Vice President for Environment, Health and Safety, I oversee UTC's remediation efforts for over 300 sites in the United States, including 87 National Priority List Superfund sites in all ten EPA regions and 27 states. Although this is a hefty workload, more than half of the sites where we have significant involvement have moved to the cleanup phase.

The ground water issue is extremely important for us and many other PRPs because the biggest issue in the program as it moves forward is whether we will continue to spend our resources on remedies that yield minimal benefit. According to EPA, over 85 percent of NPL sites, including federal facilities, have ground water contamination.

A recent National Academy of Sciences' National Research Council (NRC) study entitled: "Alternatives for Ground Water Cleanup" reports that it can often take decades or centuries using a state-of-the-art ground water treatment technique known as "pump-and-treat" to achieve drinking water standards. In many cases, despite significant investment and decades of treatment, we may still fail to achieve the mandated concentration levels. The study found that at 90 percent of the 77 sites studied, current technology did not appear capable of meeting these prescribed standards in a reasonable time frame -- meaning decades.

The cost to install a pump-and-treat system can range from half a million dollars to more than ten million dollars. Operation and maintenance costs run from one hundred thousand dollars to five million dollars per year. Present value installation, operation and maintenance costs for "typical" Superfund sites can run from ten to thirty million dollars or more. Furthermore, in the hypothetical case cited in the NRC document, the cost doubled when a 99.9 percent removal standard was imposed versus an 80 percent removal rate.

Nevertheless, even if the costs are very high and even if it takes a very long time, if the ground water being cleaned up or threatened is a current or likely future drinking water source, we could agree that the benefit is worth the cost. Otherwise, however, it becomes a foolish waste of what everyone in the end must recognize are limited financial resources.

The original Administration proposal made no mention of ground water and Chairman Swift's negotiations on remedy selection never reached agreement on how to resolve this issue. Given the number of sites affected, the cost of cleanup, the time it takes to remediate, and the technical challenges posed by ground water contamination and remediation, the member companies and associations I represent today share a fundamental belief that this subject merits close examination to ensure that problems with the existing statute and practice are corrected, not perpetuated.

We are pleased that the Superfund Reform Act recognizes and, in fact, mandates that cleanup standards and the selection of remedies be based on actual versus hypothetical risks; that site-specific risks be examined; that a number of factors, including cost, be balanced in choosing a remedy; and that equal weight be given to containment and treatment. These principles should apply to all media, but the bill does not extend this common sense philosophy to ground water.

Instead, the bill mandates Safe Drinking Water Act standards, known as Maximum Contaminant Levels (MCLs) and the more stringent but non-enforceable Maximum Contaminant Level Goals (MCLGs) as the applicable standards for all water that "may be used" for drinking. Thus, the legislation imposes a stricter standard for water that -- hypothetically-- may be water we might drink in the future than for the water we drink today.

The term "may be used" is not defined in the House bill. The Senate bill seems to define it to cover all ground water except for two narrow exceptions. Given the broad nature of this term, and the current practice of assuming virtually all pumpable, non-saline ground water may be used in the future as a drinking water source, we are forced to conclude that the term "may be used" will be given the broadest possible interpretation: i.e. "may someday, somehow, someway be used", no mater how unlikely that may be.

The bill also dictates compliance with the cleanup standard "in the ground water," which may be interpreted to require that the applicable cleanup standard (MCL) be met on a site-wide basis. Although the statute does not define the point of compliance, through the use of applicable or relevant and appropriate requirements, the point of compliance is generally determined to be at the perimeter of the waste area.

While EPA has stated that the ground water provision merely codifies existing law and practice, there are several significant differences, including:

- 1. Currently EPA makes a site-specific determination to impose MCLs where "relevant and appropriate." The proposal would eliminate this flexibility and mandate MCLs as the protective limit if the water "may be used" for drinking.
- The existing law automatically applies MCLs only when the site contains a public water system. The proposal would require MCLs if the water "may be used" for drinking.
- 3. Under current EPA policy, MCLs and non-zero MCLGs are applied for potential sources of drinking water. The bill would make these requirements mandatory. At present, there are only two substances for which EPA has established a non-zero MCLG that is different from the MCL. This could change in the future, however, and result in tougher standards for water that may never be used for drinking than for water we are currently drinking.

But the more important question is not whether this proposal would memorialize existing EPA practice or not. The question we must ask is "Will this proposal correct, not codify the currently flawed system?"

The biggest single problem with the current remedy selection process is that EPA and many states generally assume that virtually all land will potentially be used for residential purposes and that virtually all ground water will be used for drinking. These ultra-conservative risk assumptions generate unnecessarily stringent cleanup standards which lead to enormously expensive remediation efforts with no commensurate benefits.

It is true that EPA has generally taken the position that virtually all ground water "may be used" for drinking irrespective of the likelihood or timing of use. There are exceptions, however, and one provides a good example of why national ground water policy under Superfund should not demand cleanup of all ground water to drinking water standards.

UTC is a Potentially Responsible Party (PRP) at an NPL site located in an industrial area in Kalamazoo, Michigan, where ground water contamination exists. City officials have indicated that the water will never be used for drinking because the site is in a floodplain, there are municipal wells available and state and local prohibitions, including deed restrictions, prevent future well installations.

Extensive chemical analysis, sediment toxicity studies, and ground water modeling demonstrated that the ground water posed no risk and an EPA investigation found that implementation of an aggressive remedial system would not result in restoration to drinking water standards any faster than natural attenuation. EPA agreed with these conclusions and determined that ground water did not pose a risk to human health or the environment and required only institutional controls.

In this case, state government officials are contending that the site must be remediated to residential and drinking water standards, despite overwhelming evidence that the site is industrial and the water will never be used for drinking. If this argument prevails, a \$30 million pump-and-treat remedy will be mandated whereas the alternative remedy calls for attenuation and institutional controls with long-term monitoring that will cost less than two million dollars. Under HR 3800, to the extent that the water "may be used" for drinking, the drinking water standards would be mandatory.

Environmental groups have argued that different a different approach from soil contamination is necessary when addressing ground water, because ground water moves and its movement can connect the contaminated ground water with surface water or water used for drinking.

Not all ground water is connected to an aquifer or a surface water body used for drinking. However, the fact that ground water moves obviously has to be considered and addressed in deciding whether it poses a risk to health or the environment and what remedies are necessary to address it. But the issue is **not** whether it moves or is connected. The issue is whether, based on site specific data regarding the rate of such movement and the nature of such contamination, the contamination poses a risk to human health or the environment.

If it does, and there are no effective management tools (such as institutional controls, natural attenuation or source reduction) which can be applied, either alone or in combination as the situation warrants, to ensure that environmental protection goals are met, then remediation to drinking water standards, to the extent technically possible, should be required. Otherwise is should not.

There are a number of factors that need to be considered in selecting ground water remedies. Since ground water usually moves slowly, it may take decades before the plume reaches ground water or surface water that is reasonably anticipated to be used for drinking. Ground water contamination can be reduced significantly through removal of the source, such as leaking drums. The combination of time, naturally occurring attenuation, containment and source removal can result in ground water contamination levels which pose no risk to the drinking water supply.

We are not advocating "no action" zones. Nor do we accept the premise that the mere presence of any residual contamination above MCLs constitutes a "dead zone," rendering the water unusable for any purpose or a risk to environmental receptors. We believe there are many cases where we can prevent human exposure to ground water and where we can effectively control adverse impacts on other water resources.

We are advocating that ground water be treated the same as other media when the remedy is selected. That is, cleanup levels and remedy selection for all contaminated media must be based on actual, real world risk, the reasonably anticipated use of the resource and consideration of the bill's five balancing factors (effectiveness, long-term reliability, short term implementation risks, acceptability to the community and the reasonableness of the costs).

It is also curious that EPA has recently issued guidance to the States recommending a process to assist in defining the "reasonably expected uses of ground water", yet the Administration's proposal does not require consideration of the use of ground water in the Superfund process. That guidance states that:

"EPA's goal is to remediate all aquifers to meet their designated uses. Given the expense of cleaning up ground water contamination and the need to focus more effort and resources on prevention, EPA and the States must take a realistic approach to restoration based upon the actual and reasonably expected uses of the resource as well as on social and economic values. EPA, the States and other federal agencies must work together to ensure consistent approaches to determining clean-up objectives."

In a June 6 letter to members of Congress, a group of environmental organizations refer to ground water as a precious resource that "we cannot afford to lose." In effect, they are advocating resource restoration over and above what may be required for protection of human health or the environment.

In our view, the goal of resource restoration must be tempered by a recognition that the financial resources available for environmental remediation are not unlimited and must be used in the most effective way possible. As the National Academy of Sciences' NRC report correctly points out, the goal of restoration to drinking water standards was based on overly optimistic assumptions about our technological capability and needs to be re-examined in light of today's realities.

I would also like to address the issue of alternative concentration limits (ACLs) which are limits that can be applied in lieu of MCLs in certain circumstances. While the bill does clarify and improve on the current ACL language which is very confusing, it in fact makes these ACLs available in only limited cases and does not explicitly preclude the application of an ACL that is more stringent than the MCL.

The current law allows the use of ACLs instead of otherwise applicable standards in limited circumstances where there are known points of entry to surface water, where there is no statistical increase in constituents, and where enforceable measures are applied that preclude human exposure between the facility boundary and the point of entry into surface water.

If drinking water standards are presumed applicable whenever the water "may be used" for drinking, the ACL exception mechanism will be invoked much more in the future than in the past. The standard for impact on surface water -- a threat to health or the environment -- is more flexible than the current standard, but ACLs are a cumbersome mechanism for setting site specific standards.

In some cases, the government has made such unrealistic exposure assumptions that the ACLs turned out to be **more** stringent than drinking water standards! If an ACL approach is to be relied on, some reference to realistic risk assumptions is needed to make it more workable.

It is unclear what kinds of situations will be considered "appropriate" for ACLs under the Administration bill or what kinds of non-MCL standards are likely to emerge. The requirements to qualify for an ACL under the bill preclude human exposure to ground water. Thus, the only criterion for a risk-based determination seems to be whether the impact of ground water on surface water presents a risk to health or the environment and what levels are necessary to prevent it.

At best, the ACL process is complex and difficult. It should not be called into service, as the bill does, as the only way out of meeting drinking water standards for water that is not at all likely to be used for drinking in the real world. There are a number of factors that need to be considered in selecting ground water remedies. The general cleanup standards of the bill, including the required use of realistic risk assumptions, should be applied to determine appropriate cleanup levels for water that is not reasonably anticipated to be used for drinking.

In 1980 Congress and EPA believed there were several hundred sites which would cost millions of dollars to remediate and that our technology was capable of achieving drinking water standards. Today, EPA estimates there are over 3,000 potential Superfund sites which will cost billions of dollars if all were cleaned up to background levels, regardless of actual risk. This is a luxury that we as a society simply cannot afford.

We know now that we not only underestimated the task involved but also overestimated the ability of our technology to achieve such stringent standards. The Superfund Reform Act of 1994 embodies many reforms which reflect today's reality and our best estimates for the future. The ground water provision needs to reflect these same realities and reforms.

In closing, I would like to again express our willingness to work to achieve a satisfactory resolution to the concerns I have highlighted in my testimony today. I thank the Chairman for the opportunity to testify and I would be happy to answer any questions you may have at this time.



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Testimony of Joseph T. Findaro
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Local Governments for Superfund Reform
Before the Water Resources & Environment Subcommittee of the
Public Works Committee
United States House of Representatives

July 12, 1994

Thank you for the opportunity to submit a statement regarding Superfund reform. The frustrations our constituents have experienced under Superfund are what prompted formation of Local Governments for Superfund Reform (LGSR) and the Alliance for a Superfund Action Partnership (ASAP), and we strongly believe the reforms we advocate are the best possible way to reduce the litigation and waste associated with the Superfund program.

LGSR is a coalition of 74 local governments in 22 states which view a Superfund site as a community issue, not just a local government issue, a health issue, an environmental issue, or a business issue. LGSR and ASAP believe that meaningful reform should consider the effects of a Superfund site on the entire community and its economy. From this perspective it makes more sense to eliminate the conflict over liability and direct society's energies toward resolving the problem.

We believe the Administration's Superfund reform proposal is too narrowly tailored in scope to address the concerns of the majority of stakeholders, including municipalities. The fundamental flaw with the plan is its failure to guarantee every citizen who lives near a Superfund site a law that will clean up that site in an expeditious manner. Thirteen years of cleanup delays, Inefficiencies and enormous transaction costs resulting from Superfund's retroactive, strict, Joint and several liability system should be enough to convince everyone of the need for comprehensive reform. The present site-by-site fundraising system is at the heart of the problems with Superfund, and any proposal that fails to address this key element will continue the blame-game for people who obeyed the law at the time of their actions.

The Adminstration plan fails to help local governments fulfill our four primary responsibilities at Superfund sites—First, eliminating risk in a timely manner; Second, protecting the local economy and tax base; Third, returning polluted, non-productive land to productive, taxable status; and Fourth, controlling our costs at those sites. Further, the Adminstration's ability-to-pay provision for municipal owner and operators is nothing more

than another unfunded mandate, which will ultimately lead to rationing of services and increased taxes on our citizenry to pay for an inefficient federal program.

We hope to direct attention away from the disparate interests of individual stakeholders and focus on making Superfund work for everyone, reducing the costly negotiation, litigation and adversarial warfare that have characterized Superfund over the last thirteen years.

One example of the burdens Superfund Imposes on local governments Is the City of Hastings, Nebraska. Hastings is a community of 23,000 that has been involved as a PRP under Superfund since 1983. Hastings became liable when it opened and tested an old municipal water supply well—which it had never used—and placed it on-line. Although the well water tested clean, the city soon began receiving numerous complaints regarding the water's odor. The well was immediately shut down and new water samples were sent to the EPA for testing. Results of those tests indicated the water was contaminated with petroleum and other materials. Three other wells in the vicinity were also shut down and new water supply wells were constructed.

The EPA's testing and subsequent investigation of the sources of contamination of the well indicated that contamination came from no less than seven subsites, whose pollution "plumes" had co-mingled in the groundwater. These subsites include two closed landfills, an industrial facility, an old coal gesification plant (now the local police station), a former U.S. Navy ammunition depot and two grain handling facilities. EPA identified a total of seven PRPs for these seven sub-sites (together known as the Hastings Groundwater Contamination Site) and named the City as a PRP at three of them.

Cost estimates for cleanup at the seven sites range from \$20-30 million for each site, far exceeding the City's 23,000 taxpayers' ability to pay. The city's annual budget is \$26.5 million, approximately equal to the cost of cleanup of one site. Further, the city faces the potential of lawsuits being filed against it by other PRPs under Superfund's liability system.

Unlike some municipalities, Hastings recognizes that it is the business sector that drives local capital investment in the tax base and employs area citizens. The City is hesitant to conduct investigations that could identify local businesses as PRPs or sources of cost recovery actions. Although with the present liability scheme city leaders could reduce the municipality's financial liability, this action would only shift those costs, which could result in business relocations, employee layoffs, and loss of tax base, all of which would be detrimental to the quality of life in the community.

While more than a decade has passed since Hastings was named a PRP, cleanup has started at only one site (an orphan site where no PRP was found). The other sites are only now in the Investigation or cleanup design stage.

It's generally accepted that the costs associated with pollution should be borne by those who benefit from the goods and services that are the cause of that pollution yet, with Superfund, we ask only a few to bear enormous cleanup costs for activities that benefitted a large portion, if not all, of society. These costs are so great they encourage parties to litigate, sometimes for years, at great cost to one another and to society.

Superfund's primary goal is to protect human health and the environment. However, this clearly has not been the focus of EPA's enforcement efforts. Instead, the agency directed its energies toward raising the money necessary to pay for cleanup. Years of cleanup delays, inefficiencles and ever-increasing transaction costs should by now have convinced everyone of the need to change the way money is raised for Superfund.

Superfund has achieved few cleanups; it is a program which seems to lead everyone -- small and large businesses, schools, hospitals, local governments, churches, non-profit organizations and insurers -- into the courtroom; it is a law which benefits only attorneys and consultants: not the citizens who live near polluted sites, who have a right to expect timely cleanup, not communities, especially low-income communities, which cannot attract the financing necessary for economic development, not small businesses, whose existence is threatened by even the smallest trace amounts of hazardous substances on their premises; not local governments whose tax bases and economies are endangered; and not big businesses, which must allocate large amounts of resources to legal and consulting activities and expensive cleanups.

The single most important problem with Superfund is its liability and funding system. The most contentious aspect of this system is its retroactivity. Retroactive liability makes sense when applied to willful polluters who failed to operate in compliance with then applicable federal, state and local waste disposal practices, but it makes less sense when applied to those who acted in good faith, according to the applicable laws of the time, and it makes no sense at all when one considers that the ownership and operation of public waste disposal facilities and other infrastructure by local governments have always been distinctly public functions, which they could not and cannot avoid.

Keeping In mind our responsibilities as local government officials, LGSR has made a series of recommendations in alignment with those of ASAP which includes an expanded Environmental Income Tax to Increase funding and liability revisions that eliminate retroactive, strict, joint and several liability at multi-party sites, and implementing a broad-based business tax to fund cleanups at those sites. Site-by-site financing would continue for single-party sites, for parties which disposed of waste after a fixed cut-off date and for those who violated the law at the time of disposed.

Prospective Superfund liability, along with other environmental laws, regulations and market forces, will continue to serve as a strong incentive for proper waste management,

now and in the future. However, liability for cleanup of wastes disposed of after the cut-off date should be proportional to responsibility.

The process used to allocate cleanup costs among PRPs and the government should be fair and binding, and the entire cost of any orphan share should be paid by the Superfund.

The EPA should be encouraged to provide mixed funding and de minimis and de micromis settlements with immunity from third-party cost recovery actions. Such settlements should include language allowing the federal government to seek further relief if information not known at the time of the settlement is discovered indicating the settler doesn't satisfy the de minimis or de micromis criteria.

The nation's resources are finite hence, site prioritization should be reformed to reflect whether a site poses a serious public health risk. A preliminary risk assessment process should be established to evaluate risks at Superfund sites. Issues of environmental equity would be included in this process. This would move those sites which pose the greatest threat to human health to the top of the list.

The EPA should be required to uniformly identify and cite all PRPs. Currently, the EPA tends to identify only a handful of the most obvious "deep pockets" PRPs then removes itself from this part of the process, leaving those identified to fund the costs of remediation and identification of and reimbursement from other PRPs. This is a key element in increasing transaction costs and prolonging the amount of time necessary to move through the process.

LGSR has a number of specific concerns with the Administration's Superfund reform plan that I would like to briefly summarize.

Public Health: A few unfunded demonstration projects are the only real changes here. There are no major changes in cleanup staffing or procedures.

Funding: Hundreds of millions in new funding (EIRF and perhaps orphan share) simply reduce the liability of current, solvent PRPs, without ending battles at sites over financing. No expanded funding for cleanup. No new financing, except the insurance tax. Cleanup funding will be reduced to the extent any of the new programs are implemented.

Prioritization: The Administration's plan includes new listing factors, but provides no prioritization of spending based on public health and environment concerns.

Remedy Selection: Provides a complicated, inflexible, top-down system premised on mistrust and conflict due to continuation of the current site-specific financing system.

Liability: Continues the failed system of retroactive liability with all its harmful effects; creates a complicated liability allocation scheme which will serve mostly to shift costs from some big PRPs to others; does not address other key areas of financial disputes, especially remedy selection; does not reduce transaction costs and will increase those of government; does not provide solutions to small business concerns, and will make the process worse for many; creates a huge EIRF fund and bureaucracy, which could be used to subsidize PRP costs (including past and future legal fees), even if PRPs refuse to clean up sites.

Community Participation and Empowerment: Community participation sections, while welcome, are unfunded (or will reduce current Trust Fund cleanup spending), and are unlikely to work well given continuation of the conflict-based site-specific financing system. There are no provisions for training and actual participation in remediation by local businesses.

Future Liability: Weakens incentives for careful waste disposal with a huge loophole limiting liability for future disposal by corporate and municipal generators and transporters of MSW.

Focusing on Harmed Communities: No provisions to focus current health, development and educational programs on communities harmed by toxic waste.

Finally, I would point out that the so-called "consensus" on what Superfund reform should look like does not exist. LGSR is only one of numerous stakeholders excluded from the National Commission on Superfund, the NACEPT process, and the Adminstration's own policy development process. This bill does not represent a consensus among all stakeholders and should not be accepted as one.

It's time to acknowledge that Superfund has failed to fulfill its purpose. It's time to make substantive changes to the law that will allow it to fulfill that potential. It's time to reform Superfund's funding and liability mechanism and direct the resources currently being spent on transaction costs and litigation toward cleanup.

Testimony

of

Dr. Michael C. Kavanaugh

Chair, National Research Council Committee

OII

Alternatives for Ground Water Cleanup

before the

House Committee on Public Works and Transportation

July 12, 1994

Superfund Reauthorization, HR. 3800

Send transcripts to

Jackie MacDonald Water Science and Technology Board (HA 462) 2101 Constitution Ave., NW Washington, D.C. 20418 Testimony

Dr. Michael C. Kavanaugh Chair, National Research Council Committee on Alternatives for Ground Water Cleanup

before the

House Committee on Public Works and Transportation

July 12, 1994

Superfund Reauthorization, HR. 3800

Mr. Chairman, Members of the Committee, my name is Michael Kavanaugh. I am a Principal with ENVIRON Corporation located in the Emeryville, CA office, and have over 20 years experience as a environmental engineer specializing in water, wastewater and hazardous waste management. I have a PhD in civil engineering, am a registered engineer in several states, and am a Diplomat of the American Academy of Environmental Engineers. I am also the Chair of the Committee on Alternatives for Ground Water Cleanup, established by the National Research Council (NRC), under the auspices of the Water Science and Technology Board and the Board on Radioactive Waste Management.

I appreciate this opportunity to testify before this Committee during its deliberations on reauthorization of Superfund, because I believe the findings and recommendations of our report, released on June 23, 1994 in prepublication copy, are relevant to these deliberations and should be given full consideration.

The NRC Committee on Alternatives for Ground Water Cleanup (NRC Committee), included 18 nationally recognized experts in hydrogeology, geochemistry, civil and environmental engineering, risk assessment, toxicology, epidemiology, economics, environmental law and public policy. Members affiliations included academia, industry, consulting companies, and environmental groups. The

Committee was established at the request of the Environmental Protection Agency, (EPA), and funding was provided by EPA, the Department of Energy (DOE), Chevron Corporation, and the Coalition on Superfund.

The NRC Committee met nine times beginning in December, 1991 and heard presentations from all stakeholders in the debate on ground water cleanup, including representatives from EPA, DOE, DOD, manufacturing industries, environmental groups, community action groups, and academic experts. A draft report was completed in 1993, and subjected to the usual thorough peer review procedures required of any document released under the auspices of the NRC. The NRC Committee's findings are now available from the National Academy Press, with a hard copy edition expected to be available in early September.

The overall objective of the NRC Committee was to evaluate the major technical and public policy issues arising from the apparent scientific limits to restoring ground water to health based clean up levels or to pre-contamination condition. Key questions raised included the following:

- What are the capabilities of pump-and-treat technology, the most common remediation technique for remediating contaminated ground water?
 - What are the scientific limits to restoration, if any?
 - Can alternative technologies overcome these limits?
- What are the potential economic and policy consequences of failure to achieve health based cleanup levels in ground water?
- What policy alternatives should be recommended to reflect the scientific limits to aquifer remediation?

Given the widespread use of pump-and-treat, a simple technology involving extraction of water, treatment at the ground surface, and disposal, we were disappointed to find few in-depth evaluations of the efficacy of this technology.

However, several data sets were made available including studies by EPA, the American Petroleum Institute, Oak Ridge National Laboratory, the US Air Force, and the San Francisco Regional Water Quality Control Board. In addition, the NRC Committee reviewed original data on many sites in these studies to gain additional insight into the factors controlling system performance. Findings are based on an assessment of pump-and-treat systems at 77 sites across the US with at least 5 years of operational history and the accumulated experience of committee members. While this sampling is not necessarily statistically representative of all contaminated sites, these sites represent a broad range of site sizes, hydrogeologic conditions, and contaminant chemistry. The NRC Committee believes that this data set adequately represents the range of scientific and technical constraints experienced at all sites.

FINDINGS

The NRC Committee found that while not theoretical impossible, restoration of ground water quality throughout the aquifer to health based cleanup levels, usually set at MCLs, is inherently complex and may not be possible at many sites. Key technical reasons causing this complexity include: a) physical heterogeneity of aquifers, b) presence of non-aqueous phase liquids (NAPLs), c) presence of contaminants in inaccessible regions within aquifer solids, d) sorption of contaminants to aquifer solids, and e) difficulties in characterizing the subsurface, particularly finding the location of small source areas that can continue to contaminant an aquifer. In addition to these inherent factors, the pump and treat system was either not designed to achieve restoration, but rather hydraulic containment or the design was inadequate to achieve the desired goal in some cases.

At 69 of the sites evaluated, cleanup goals have not yet been reached.

Although it is possible that they will be reached at some of these sites in the future,

the Committee concluded that it was either unlikely that the cleanup goal would be reached in a reasonable time frame or no conclusion could be made. At six of the eight sites reporting successful use of pump-and-treat, contaminants of concern were biodegradable under aerobic (in presence of oxygen) conditions, which appeared to be a significant reason for the success reported. In two cases, contaminants were chlorinated solvents. In all cases, data supporting the claims of success were sparse, and additional post closure monitoring is warranted.

The NRC Committee concluded that while conventional pump-and-treat is limited in its capabilities to remove contaminants from ground water aquifers, and restore sites to health based cleanup levels, the technology is effective at hydraulic containment, and the reduction in the size of contaminant plumes. Contrary to popular belief, this technology has not failed, it has just been asked to achieve results beyond its capabilities. It will continue to be an important tool for site control and management.

One option to overcome these apparent limitations is the use of alternative and innovative technologies for subsurface remediation. The NRC Committee reviewed many of the technologies that have been developed over the last several years, some of which are now widely used, such as soil vapor extraction, and some of which are now being tested in the field. Many of these technologies can achieve more efficient removal of contaminants compared to conventional pump-and-treat. However, these and future technologies face the same technical constraints faced by pump-and-treat. There are significant limits to complete restoration of aquifers even with more efficient subsurface remediation technologies. In addition, the NRC Committee found that in spite of major efforts by EPA in particular, DOE, DOD, and private parties to expand the use of innovative technologies, significant technical, institutional, and economic barriers to widespread use still exist.

The NRC Committee concluded that all sites could be broadly defined into three groups characterized by an increasing degree of difficulty in achieving complete restoration. For sites in the first category, restoration to health based cleanup levels using either pump-and-treat or alternative technologies appears feasible. For sites in the second category, achieving health based clean up levels appears improbable but not impossible. Finally, for sites in the third category, cleanup to health based levels is highly improbable, and likely not technically feasible, even with alternative technologies due to inherent site complexities.

The distribution of sites in the US in these three categories is unknown. Of the 77 sites reviewed by the NRC Committee, two were classified in the first category, and approximately 41 and 34 were in the second and third categories, respectively. Based on these findings, and the accumulated experience of the members of the NRC Committee, we concluded that the majority of sites (in my opinion, perhaps more than 80 percent) are likely to be in the latter two categories. And a significant but unknown number (in my opinion, perhaps as high as 40 percent) of sites may be classified in the third category. In this regard, EPA has recently estimated that over 60 percent of the NAPL sites with organic contamination have a high probability of being contaminated with NAPLs, and many of those are of the dense NAPL variety. These sites would generally fall in either the second or third categories. Although the exact distribution of sites in these three categories is unknown at this time, there is strong evidence that at a very large number of sites, complete restoration may be technical infeasible from an engineering perspective.

The NRC Committee further found that at many sites, portions of a site may be exhibit characteristics from different categories. For example, in a large contaminant plume, the apparent source area may be quite small in extent and may be classified as category 3, while the dissolved plume will be large in extent but may be

classified in category 1 or 2. Thus, different technical and policy strategies may be required for different portions of a contaminated plume.

The NRC Committee also reviewed the recent key policy strategies pursued recently by EPA, which reflect their awareness of the technical difficulties in restoring some sites to health based cleanup levels. These policies, primarily issued as guidance documents or directives include 1) the early action policy or the so-called Superfund Accelerated Cleanup Model, 2) DNAPL policy, and 3) the technical impracticability policy, and 4) policies designed to increase the development and use of innovative technologies for site cleanup. While it is too early to evaluate the effectiveness of these policies, the NRC Committee commended the EPA for recognizing the technical limitations of restoring sites to health based cleanup levels at some sites, for stressing the need for early action to reduce the spread of contaminant plumes, and for promoting technology transfer to encourage the development and use of innovative technologies. However, the NRC Committee is concerned that EPA policies do not fully reflect the Committee's finding that at a large number of sites, restoration to health based cleanup levels may be technical impracticable.

RECOMMENDATIONS AND IMPLICATIONS FOR REAUTHORIZATION OF SUPERFUND

The Committee report includes ten recommendations for action on improving the process of ground water cleanup. The most relevant to the Reauthorization Process include the following:

The Committee recommends that in evaluating whether ground water cleanup is technical feasible, the EPA (and other regulatory agencies) categorize sites into three groupings corresponding to the complexity of the site.

This recommendation addresses shortcomings in the Guidance for Evaluating the Technical Impracticability(TI) of Ground-Water Restoration, which appears to be the recommended approach to determining whether compliance with or attainment of health based cleanup goals, apparently MCLs for ground water, is technically impracticable from an engineering perspective, as stated in Section 501 of Title V, HR 3800. The NRC Committee points out two shortcomings. First, the TI process is lengthy and complex, and appears premised on the assumption that a small number of sites would be considered for such a review. As noted above, the Committee feels that a very significant number of sites will be considered eligible for the TI process, leading to possible overburden of EPA staff and further delays in remediation.

Secondly, it appears that at most sites, a TI process cannot begin until significant testing of alternative technologies has been completed. Permitting of TI waivers prior to determination of the final remedy appears unlikely, although not ruled out by the guidance documents.

The recommended solutions to this problem include the following:

EPA and other agencies should use a three-tiered model and permit TI waivers at sites classified in category 3, where cleanup to health based levels is highly improbable due to inherent site complexities. At these sites, interim objectives would be established, for some portion or for the entire site, while maintaining the overall objective of protecting human health and the environment. Such objectives could include containment of the source area, for example, and restoration to health based levels in the dissolved part of a contaminant plume. I believe this approach is consistent with the language including in HR 3800. The one area of uncertainty is the language currently used in the Guidance document. A review of this issue by EPA is warranted.

EPA should also consider the use of expert independent panels to assist in TI evaluations at complex sites at all stages of the site remediation process including

site characterization, remedy selection, remedial action, and post-remediation

At these sites the recommended new cleanup paradigm as presented in the Committee's report is:

1. the source of contamination "should be contained;"

2. the plume of dissolved contaminants "should be cleaned up to drinking

water quality" if technically feasible;

3. the "possibility of removing some of the contaminant mass should be considered." The Committee envisioned efforts to reduce the inherent risk presented by the site, such as removal of mobile DNAPL and, in some cases, vapor extraction. However, maximizing the pumping rate to remove mass form source areas is not an efficient removal method and still leaves the ground water contaminated above drinking water standards;

4. data should be gathered "to determine whether attainment of ground

water cleanup goals is feasible with existing technology;"

 if cleanup goals are not attainable, "interim cleanup objectives should be established for the site, prior to implementation of the full scale remedy;" and

 periodically, EPA "would review whether technology had advanced to the point that the interim objectives could be moved closet to the longterm goal."

This recommendation flowed from the Committee's addressing one of the central issues in the Superfund reauthorization debate, i.e., whether drinking water standards should remain the cleanup goal for ground water in light of the technical impracticability. The Committee explicitly sought to develop a recommendation that addressed both the legitimate concerns of many that the goals of Superfund should not be weakened and the concerns of others that significant amounts of money were being wasted attempting to clean up the impossible.

The Committee concluded that

whether changes are needed in the policies for setting long-term cleanup goals can only be decided through policy debates; scientific factors can influence these debates, by value judgements must be the deciding factors. At the same time, the Committee believes that because existing ground water cleanup cannot be attained at a large number of sites, short-term objectives should be established at these sites to temporarily supersede long-term goals.

Under the scenario that the Committee envisions, short-term objectives would be set based on the capabilities of current technology but the future cannot be ruled out.

The Committee believed that "interim objectives prevent the expenditure of resources trying to reach goals that are not achievable with current technology and more accurately communicate to the public what is possible with current technologies. At the same time, interim objectives do not rule out the possibility that at some future time new technological breakthroughs may enable the achievement of existing cleanup goals."

This approach was adopted because it explicitly preserved the stringent goal of attaining drinking water standards (which many Committee members believed should not be abandoned under any circumstance), yet addressed concerns about some cleanup expenditures being wasteful. The Committee also believes that this proposed new cleanup approach is linked to the recommendations to increase the incentives for ground water cleanup research as discussed below.

The Committee recommends that the EPA assess and develop guidance on institutional strategies for preventing public exposure to contamination over the long term at sites where reaching health-based cleanup goals is infeasible with present technologies.

If the NRC Committee is correct that a large number of sites may be judged to be technically impracticable for complete restoration, then a large number of sites will require long term (decades) maintenance. The Committee believes that EPA and other regulatory agencies will need to develop strategies to insure the affected communities that financial mechanisms and institutional arrangements are sufficiently robust to provide long term protection to the ground water. This is an issue that the Committee did not evaluate in detail, but we strongly urge EPA to undertake the necessary studies to develop these strategies. This could be mandated by appropriate language in HR 3800.

Although the Committee recognizes that different agencies must operate under different authorities, all regulatory agencies should recognize that ground water restoration to health-based goals is impracticable with existing technologies at a large number of sites.

The Committee is cognizant of the policy of many states for non-degradation of ground water. There is thus an inherent conflict with this policy and the more flexible approach to site remediation in the proposed legislation. The Committee urges that all state agencies recognize the inherent limitations to restoration of contaminated ground water at many sites.

The Committee recommends that the Congress investigate the possibility of charging an annual "infeasibility fee" to public and private responsible parties at sites where attaining health-based standards is not presently feasible.

The Committee identified several barriers to the use of innovative or alternative technologies for ground water restoration. One of the major barriers is the

issue of liability should the technology fail. The Committee sees two options that are worthy of consideration with respect to the infeasibility fee. A portion of the funds collected could be used to support an applied ground water research fund that would target development of new technologies for improved ground water cleanup techniques. It is important to recognize that applied research for ground water restoration involves close interaction between theoretical, laboratory and field studies. Current research funds in this area provided by EPA are modest by any standards and augmentation of these funds by this mechanism would be beneficial.

A portion could also be used to reimburse responsible parties who use new technologies in the event that the technology failed to achieve the target levels. If the technology were successful, then all parties would benefit. The details of such a program need to be developed. The fundamental goal however, would be to improve the rate and efficiency of contaminant mass removal from sites where TI waivers have been granted, thus possibly minimizing the duration of long term maintenance. This form of risk sharing between the government and responsible parties could accelerate the application of innovative technologies.

The Committee recommends that the EPA systematically evaluate its experience in cleaning up sites to improve understanding of the factors that prevent achievement of health-based ground water cleanup goals.

Due to the high degree of heterogeneity that exists in most subsurface environments, the performance of subsurface remediation systems can vary significantly from site to site. Furthermore, ground water remediation, even if successful will usually require many years of operation. The Committee recommends that EPA routinely evaluate performance data from selected sites and make this information available, similar to the 24 site study that was used as part of the data

base evaluated by this Committee. The lessons learned from such studies are invaluable towards the goal of maximizing contaminant mass removal from the ground water to the extent practicable.

SUMMARY

In summary, the question, "can contaminated ground water be restored to health based cleanup levels?", does not have a simple yes or no answer. After approximately ten years of pumping large volumes of water at contaminated sites nationwide, it is apparent that while a few sites may be easily restored, the majority will require patience, and long term maintenance. It is my hope that the NRC report has finally laid to rest any thoughts that restoration of contaminated ground water is a simple task. Expectations of quick and easy solutions are illusory.

Much of the language I have reviewed in sections 501 and 502 of HR3800 is consistent with the findings of the NRC Committee. However, it is still not clear that Congress or EPA have fully appreciated the primary finding of this report. And that is that a substantial number of sites may be faced with insurmountable technical constraints that make cleanup of the ground water to MCLs or better throughout the plume volume technical impracticable. The policy recommendations of the report arise from this key finding and provide policy makers with several innovative ways to achieve the primary goal of Superfund namely, achieve protection of human health and the environment. I believe that the recommendations made in the report can lead to a significant reduction in the costs of remediation, while still achieving protection of human health and the environment and can provide the basis for informing the American people of the physical realities facing ground water restoration.

Thank you for your consideration.



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Testimony

of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO)

for the Hearing of the U.S. House of Representatives Subcommittee on Water Resources and Environment

on H.R. 3800

July 12, 1994



Good afternoon. I am Claudia Kerbawy and I am a Site Management Unit Chief in Michigan's Superfund Program. I am also the primary spokesperson on reauthorization issues for the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and am here today representing ASTSWMO. I am accompanied by Mark Giesfeldt, Chief of the Emergency and Remedial Response Section of the Wisconsin Department of Natural Resources. Mark Giesfeldt is also Chair of ASTSWMO's CERCLA Subcommittee. ASTSWMO is a non-profit association which represents the collective interests of waste program directors of the nation's States and Territories. Besides the State cleanup and remedial program managers, ASTSWMO's membership also includes the State regulatory program managers for solid waste, hazardous waste, underground storage tanks, and waste minimization and recycling programs. Our membership is drawn exclusively from State employees who deal daily with the many management and resource implications of the State waste management programs they direct. Working closely with the U.S. Environmental Protection Agency (U.S. EPA), we share the objectives of the Congress and the public in providing for safe, effective and timely investigation and cleanup of the many contaminated sites throughout the nation. We, therefore, have a fundamental interest in the dialogue surrounding the proposed Superfund Reform Act of 1994 [identified hereafter as "H.R. 3800"] designed to reform and restructure the Superfund program. As the day-today implementors of the State and Federal cleanup programs, we

believe we can offer a unique perspective to this debate and thank you for recognizing the importance of the State Role in the Superfund program.

EVOLUTION OF THE STATE ROLE IN CERCLA:

It is our understanding that, when Congress enacted the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) in 1980, commonly known as Superfund, it was envisioned that there were approximately 400 serious abandoned hazardous waste sites requiring remediation and that the Superfund program would have a life-span of perhaps five years. Subsequently, there appeared to be a recognition that the clean up of these sites was complicated, time-consuming and required more extensive resources than the Federal government could provide. Consequently, the Superfund Amendments and Reauthorization Act (SARA) of 1986 mandated increased State participation in the program. Today, it is estimated that there are over twenty thousand sites in this country in need of some sort of remediation. We believe the federal Superfund program will not address even the existing NPL sites in a timely manner, much less meet broader demands as more sites are added to the NPL. Of the approximately 1300 identified NPL sites, approximately 236 have been cleaned up.

In 1980, few believed that States would need to play a substantial role in the cleanup of the four hundred NPL sites, and States were just beginning to evaluate the need to develop their own cleanup programs. However, in response to the

thousands of contaminated sites being identified nationwide that either could not wait for U.S. EPA attention or did not meet the Agency's criteria for inclusion on the NPL, States developed their own Superfund programs. As of 1990, forty-one States had adopted a State Superfund law based on some form of liability. and forty-four States had developed funding authorities - two essential components to implementing an effective State cleanup program. We believe that States are remediating the vast majority of the confirmed contaminated sites in this country and will continue to do so in the future. We offer as a measure of proof, preliminary data results from a survey which ASTSWMO has recently completed with the support of the U.S. EPA. In 1992 ASTSWMO and the U.S. EPA agreed that while there was an abundance of data on Federal cleanup levels, there was a considerable gap in data on State cleanups. Therefore, a study was initiated and implemented for the purpose of providing a more comprehensive picture of Superfund-influenced cleanups, both complete and underway, and to lend credibility to the current debate surrounding the issue of the appropriate State role in Superfund.

Specifically, the aforementioned survey was designed to measure the extent of State hazardous waste cleanup activity at non-NPL sites exclusive of those sites being cleaned up under RCRA authorities. All hazardous waste cleanup efforts performed by States/territories directly, under State/territory enforcement authority, and under State/territory voluntary and property transfer programs were eligible for inclusion in this data

gathering effort. Thirty-nine States and two territories responded to the survey. Preliminary data results indicate that approximately 11,000 sites have been remediated in these 39 States and two territories since the inception of Superfund in 1980. In addition, these States and territories indicated that they are currently working on another 11,000 active sites. Let me stress that these figures are still in the final stage of being quality checked and verified and that the figures should be used as a point of reference when measuring State cleanup capabilities and when discussing what may be the actual universe of contaminated sites in this country. ASTSWMO and U.S. EPA will present the final report to the Subcommittee upon its completion.

We believe the current State Role provided for in CERCLA does not recognize the tremendous growth which has occurred in State capabilities over the last 13 years. For example, the State role at NPL sites can range from simply providing the requisite State match funds at the time of the construction of the cleanup remedy to performing response actions to the signing of Records of Decision (RODs). Generally, however, the U.S. EPA has interpreted CERCLA to mean that only the U.S. EPA has the authority to select a remedy, regardless of whether a State was assigned lead agency status. In those few cases where a State has signed a ROD, the remedy was being implemented by a private party and Fund dollars were not being expended. And while these sites may have saved time in the beginning of the process due to a State's streamlined assessment process, they have resulted in

even more arduous disputes when the U.S. EPA has disagreed with the selected remedy at the ROD stage. In New Jersey for example, the U.S. EPA and the State regulatory agency disagreed on which remedy to implement at a State lead Superfund site. This disagreement caused a one-year delay in the selection of the remedy. The disagreement was over which remedy complied with the preference for permanence and treatment, not over the appropriate level of protectiveness. These types of lengthy disputes between the States and EPA will continue - resulting in fewer cleanups and less land returned to productive use, unless States are provided the authority to select the remedy. ASTSWMO, therefore, applauds the Congress for recognizing the need in H.R. 3800 to substantially increase the State role in the Superfund program.

Today, I would like to provide you with several of ASTSWMO's comments and recommendations on Title II - State Role, specifically, and on other components of H.R. 3800 which will have significant impact on State Waste Programs.

ASTSWMO COMMENTS ON H.R. 3800, TITLE II - STATE ROLE:

Let me begin by reiterating our support for the concept of delegation. Delegation is a concept which is long overdue. As indicated by our aforementioned non-NPL study, States have remediated over 2,600 non-NPL sites (i.e, construction completes). State capabilities have clearly grown and will continue to grow. We believe, however, that an authorization process, where States implement their own laws and programs in lieu of the Federal government is the only true long-term method

for achieving the maximum output availed to us via State Waste programs. ASTSWMO, therefore, believes the concept of authorization should be revisited. We caution, however, that only an authorization process which affords States the opportunity to implement their own laws in a manner substantially consistent with the outcomes achieved via the proposed Superfund Reform Act is worthy of consideration. An authorization proposal which would force States to mirror the federal Superfund program in all aspects is not in our perspective any different than the proposed delegation program, and therefore, has no value. We also note, that any authorization model developed should be deemed satisfactory to all relevant Superfund stakeholders in order to ensure the timely passage of Superfund this year. Therefore, we would rather forego an authorization program than accept either a flawed authorization model or stand in the way of reauthorization this year, as long as a viable delegation program is included in H.R. 3800.

We have several suggestions for improving the State Role title of H.R. 3800 in order to ensure that a viable delegation program is indeed developed.

1. Section 127(a)(1) provides for the "Application for authority to take preremedial action at non-NPL facilities." We believe the intent of this section was simply to codify status quo whereby States are awarded cooperative agreements to perform pre-remedial work at non-NPL sites. Currently, the majority of States (i.e., 45 States and Territories) receive funding to

perform preliminary assessments, site inspections and hazard ranking packages at non-NPL facilities. Nowhere is it written that a State must apply for authority to conduct these activities at non-NPL sites - they simply apply for the funding. Non-NPL sites are traditionally the States' responsibility from site discovery through the remedial action. In fact, it is our understanding that the National Contingency Plan excludes the Federal Government from taking remedial action at sites which are not listed on the National Priorities List (NPL), except for emergency situations. This very clearly indicates that States are the key parties responsible for conducting work at non-NPL sites. We therefore recommend that the word "Authority" in the title of this section, be replaced with the word "Funding".

- 2. Timeframes. Section 127(b) specifies that the

 Administrator, in consultation with the States, shall develop
 regulations specifying the qualifying criteria for delegation.

 If a goal of a reauthorized Superfund program is to achieve a

 State implemented cleanup program, then Congress must be very
 clear in mandating EPA to develop delegation criteria within a
 specified time period. Until delegation criteria is developed,
 States can not become delegated and one primary goal of H.R. 3800
 will not be achieved. We recommend specifying a one year time
 period for the development of these U.S. EPA regulations.
- 3. Pre-enforcement review. We understand that the intent of section 127(e)(2) was to ban the pre-enforcement review of remedies selected by a delegated State. We whole-heartedly

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support the intent of this section but are concerned that as crafted it did not accomplish its objective. We recommend deleting the last sentence of this section and suggest replacing it with more precise language such as:

"Judicial review of any response action taken or selected by a State pursuant to this section shall be limited in time and manner as provided in section 133(h) and section 113(j) of this Act for response actions taken or selected by the President provided that there shall be no such limitation on the Administrator's authority pursuant to subsection (g) of this section".

State Cost Share. H.R. 3800 also provides for a State to pay or assure payment of 15 percent of the costs of all response actions and program support or other costs for which the State received funds from the Fund. Currently, States are responsible for 10% of the remedial action costs and 100% of the operation and maintenance costs. This new provision will increase the State cost share to 15% and require States to pay cost shares on areas not traditionally subject to State matches, i.e., program support costs, site studies...etc. Also, under the new allocation system, States will be responsible for providing matches for orphan shares financed via the Fund; and for a generator or transporter's share of municipal solid waste should it exceed the 10% cap. Carol Browner, Administrator of the U.S. EPA, has testified that State matches for the orphan share funding were not included in their original calculations which determined the 15% cost share figure. In tight budgetary times this may become a significant increase in costs to be placed on State governments. ASTSWMO along with the National Governors'

Association has recommended that the State match for both cleanup actions and operation and maintenance be 10% for all sites.

Further, we are aware that many consider States to be the major beneficiaries of the leveling of the cost shares between operation and maintenance and all other response costs and that total cost analyses seem to support this view. ASTSWMO represents State Waste Managers and does not wish to quarrel with competent cost analysts over this matter, however, we do wish to point out that all costs are ultimately local, and while national averages may show a bias in favor of States, those States with smaller programs, or programs with less reliance on expensive O&M costs will not benefit to the degree the national average might indicate. Also, it is our understanding that these cost estimates were based on a relatively stable sized NPL, and it is our opinion that the current H.R. 3800, because of the financial incentives for responsible parties and the weight given to public input, will actually tend to encourage more sites to be placed on the NPL. If the total NPL increases significantly, we believe total costs will increase and some of the current estimates will be less predicative of the impacts on States.

5. State Registry. The State Waste Managers are very concerned with the concept of a State Registry for many reasons. First and foremost, this appears to be an unnecessary and <u>unfunded</u> mandate placed on the shoulders of State governments. Second, we question the intent of this concept. For example, many States have established successful voluntary cleanup programs which have

resulted in large amounts of land being returned to productive economic use. One of the major flaws in the Federal Superfund system has been the stigma associated with being placed on the National Priorities List or CERCLIS. Our primary question is, how will developing yet another list of potentially contaminated sites in this country serve to alleviate our "brownfields" problem? If Congress feels obliged to continue with this concept of a State Registry, at the very minimum, this Registry must be fully funded by the federal government and the words, "believed to present a current or potential hazard to human health or the environment" must be replaced with the words, "confirmed contaminated sites based on a preliminary assessment/site inspection" and that an exiting mechanism, as created by State Regulatory Agencies, should be allowed.

6. Transition. Section 206(d)(5) effectively terminates the ability of a State to enter into a cooperative agreement with the U.S. EPA to assume the lead for a NPL site absent delegation. The current State-lead status is important to retain as it is an effective tool for building State capabilities/capacity. There are States which either do not desire full delegation or are not yet capable of assuming full responsibility for the remediation of a NPL site. These States, however, may wish to continue building their capabilities and as we presume the desire of this Congress is to have States eventually implement the majority of the Federal Superfund program, then the current statutory language under 104(d) must be maintained.

7. Federal Facilities. Lastly, we wish to congratulate

Congress for establishing an expedited transition of Federal

Facility sites to State authority. Federal Facility issues are

extremely important to States and we must caution that any

weakening of the Federal Facilities provisions found in Title II

may very well jeopardize many States' support for H.R. 3800.

ASTSWMO COMMENTS ON OTHER TITLES CONTAINED IN H.R. 3800:

- Oxley for developing the Title III amendment on Voluntary
 Cleanups. The majority of sites in this country are State sites
 and we hope that this Subcommittee will agree with the Energy and
 Commerce Committee that States are the sole implementors of
 Voluntary Cleanup programs. We strongly recommend that this
 title be retained as written.
- 2. Pre-Introduction ROD Provision (Section 130(a)(2)).

 Effectively, all RODs signed before the enactment of this Act may have their settlements reopened and subjected to an allocation procedure. We do not believe that either the U.S. EPA or the State regulatory agencies have the time or the personnel to attempt this momentous task. Nor, do we believe this is the best use of limited governmental resources, especially as it does not result in additional environmental or public health improvements. We need to be proactive in our quest to remediate hazardous waste sites. We urge the Committee to reconsider this potentially debilitating provision to the Superfund program and to delete it in its entirety. In addition, 130(a)(3) allows the allocation

process to be conducted at any non-NPL facility - we believe this provision should be deleted, as well.

- 3. Strict, Joint and Several Liability: We wish to congratulate Congress for recognizing the vital importance of the Strict, Joint and Several Liability (including retroactive liability) provision under CERCLA. From our perspective as State Waste Officials, Strict, Joint and Several Liability is vitally important to compelling cleanups at non-NPL sites. When determining the fate of the Federal Superfund program, one must remember that as of 1990 over forty States have adopted some form of the Strict, Joint and Several Liability provision and that any changes in the current federal law would have serious ramifications in the world of non-NPL cleanups. For example, how would 10,000 20,000 estimated non-NPL cleanups be funded in lieu of the current retroactive liability provision?
- 4. Single Numerical Risk Level: We suggest that language either be added to H.R. 3800 or to the legislative history clarifying the true intent of section 501(5)(d)(1) National Goals for the Protection of Human Health and the Environment. It is our understanding that by this section Congress intends the development of a single numerical risk goal for chemical carcinogens and noncarcinogens. H.R. 3800, however, states, "National goals for human health shall be expressed as a single, numerical level for chemical carcinogens and noncarcinogens."

 This phrase, "national goals" has caused some interested parties to interpret/contemplate the retention of the current risk range

for carcinogens. We suggest the Committee clarify the intent of section 121(d)(1) with the following revision, "National goals for human health shall be expressed as a single, numerical level for chemical carcinogens and as a single numerical level for noncarcinogens". We believe the development of a single numerical risk level is vital to the success of the Superfund program and more particularly the reforms suggested in Title V of this bill. Our members have found the current risk range to be the single biggest cause of delay and dispute when selecting a remedy for a site. The balancing tests of cost and technology, coupled with a single numerical goal, will have a very desirable effect on future remedy selection practices.

CONCLUSION:

As States are fast becoming the primary implementors of hazardous waste laws in this country, ASTSWMO hopes that its recommendations will be recognized as constructive improvements to the Superfund Reform Act. We are available to assist the Committee Staff as you continue your deliberations on this important legislation. Thank you for allowing me to present a State perspective and I would be happy to answer any questions.

Testimony of Rick Leavitt
President and Owner, Chelsea Clock Company
before the

U.S. House of Representatives
Public Works and Transportation Committee
Subcommittee on Water Resources and Environment
July 12, 1994

My name is Rick Leavitt, and I appear before you today to ask to be taxed. I am the president and owner of Chelsea Clock Company. I speak to you as an inner city small business member of ASAP concerned with the devastating economic impact Superfund retroactive liability is having on my business and thousands of other small businesses. I oppose the Administration Superfund bill because it does very little for small business, and very little to resolve the economic paralysis created by retroactive liability. I urge you to consider the ASAP proposal that eliminates retroactive liability and incorporate our proposals in reform legislation this year.

Let me be specific. Chelsea is a small business with a reputation for making the finest clocks in the world. Chelsea clocks are in the White House and are given by presidents to other heads of state. They have been manufactured at the same facility in Chelsea, Massachusetts, since 1897 -- nearly 100 years. Thirty skilled crafts men and women produce America's finest clocks and they all are in danger of losing their jobs because of Superfund's retroactive liability.

Recently, it was discovered that ground water under our half acre site contains elements of an industrial cleaning solvent placed there over many years under previous owners, the last one of which is now a division of Allied Signal. The Administration's bill does nothing to make Allied Signal responsible for cleanup of their pollution of what is now my property.

While Chelsea Clock is not yet an NPL site, I have attached an analysis of how we would be affected by both the ASAP Eight Point Plan and the Administration bill if our site was so designated.

More immediately, however, I have an extremely pressing problem that is not addressed at all in the Administration bill. Upon reporting discovery of contamination to my bank, the bank's response was to demand full payment of our mortgage under threat of liquidation of the business.

After spending \$60,000 for lawyers (the bank's and mine), my bank agreed not to foreclose but increased my payments by nearly double. This has had an adverse impact on the business. Very recently, however, my bank was bought out by Citizens Bank, a local subsidiary of a foreign bank, and Citizens now is demanding I pay them off in full

within six months, threatening liquidation if I don't.

Allied-Signal is organizing support for the Administration bill due to the great benefits in it for chemical companies. The bank's have gotten the carveout from liability they want. But what does the bill do for my small business?

Chelsea is but one of thousands of small businesses around the country confronted with unreasonable demands and threats from Government, large PRPs and their banks because of retroactive liability. There is nothing in the Administration's bill that will give us relief. And thousands more small manufacturing businesses attempting to borrow in coming years to finance growth and employment will discover it impossible to do so. Banks will not lend to businesses with Superfund liability because they fear -- correctly -- that with retroactive liability a business may face financial ruin. Thus, unfortunate businesses like Chelsea, unable to finance a costly cleanup, will discover they also are unable to finance growth and employment and, like Chelsea, may confront bank liquidation and loss of existing jobs.

If there is a better prescription for economic paralysis in the small business sector, it would be hard to imagine. Paralysis is occurring mostly in the urban environment where many small manufacturing businesses are located. Citizens in those areas face loss of jobs and limited or non-existent new job opportunities. At Chelsea, our growth in employment is stifled not only by the threat of bank liquidation but by refusal of the traditional banking system to lend working capital to support growing demand for our products.

Retroactive liability functions now in the small business sector as a punitive measure for past behavior. Whatever its original intent, retroactive liability has the practical effect of delaying cleanup and promoting economic paralysis. Solutions proposed in the Administration's bill strike me as a tortured attempt devised by the bureaucracy to fix a badly flawed system. These solutions add more complexity to the system and create an incentive for EPA and large PRPs to bring many more small businesses into the system because of the new allocation and orphan share processes.

I hear you have been told "small business" supports the Administration bill. That is wrong. Perhaps some trade associations here do -- but go outside Washington and talk to small businesses affected by this law and they will tell you there is no such consensus -- unless you replace the liability system. What you have in the Administration's bill strikes me as government by the bureaucracy, for the bureaucracy.

I ask again that you look at the monster the Administration bill creates for small business and compare it with our efficient proposal to eliminate retroactive liability. EPA has had the authority since 1986 to do for small business most of what is contained in the Administration's bill, but has failed to do it. Why do we think fresh authority will cause EPA to act any differently now?

ASAP's proposal to eliminate retroactive liability and replace it it with a larger,

broad-based business tax fund for cleanup will result in fast, cost-effective cleanup of contaminated sites and promote economic development. Speaking as the small business representative of ASAP, we will gladly trade the certainty of a tax for the uncertainty of the retroactive liability system which causes so much economic paralysis and portends possible financial ruin for small businesses.

What we need here is an old-fashioned American solution -- to get the cleanup job done fast and efficiently. We don't want to continue to have to fight among ourselves. We want to get on with the job of building this Nation.

Chelsea Clock and Superfund: A Hypothetical Case Study

Chelsea is not a Superfund site, although it is subject to the effects of the Superfund liability system. If it were a Superfund site, this is how the ASAP Eight Point Plan and the Administration bill would affect it.

1. Facts

The one half acre on which Chelsea's factory is located in the inner city was slightly polluted over a period of almost 40 years, by one employee regularly pouring small amounts of a cleaning solvent onto the ground. This ended before I bought the company in 1978.

During the period of pollution there were two owners, the last of which was Bunker Ramo, now a division of Allied Signal. The first relevant owner is long gone. So this would be a multi-party site, with a significant orphan share (although it would not get orphan share financing under the bill, as discussed below).

2. Treatment Under the Eight Point Plan

The state would prioritize our site compared to the public health risk of other NPL sites in the state, consulting with the community and us on what happened and what to do about it.

We and Allied Signal could be ordered to manage the cleanup, if the state wanted us to. If we agreed, our liability would be terminated, and the Fund would reimburse us. We would not fight over the remedy decision, because we would no longer have a major stake it in.

We would both pay higher taxes for the larger fund, but I could get working capital loans immediately, and avoid foreclosure. We would expand our work force.

The Government would get a lien against my property for any amount by which the value of my property was increased by the cleanup -- to make sure I got no unjust enrichment.

3. Treatment Under the Administration Bill

a. PRP search

This would not be a big deal at our site; there are just three PRPs. It will be a huge issue at most sites, with many more small businesses being dragged into the process far earlier than they are today. But I will have my lawyer back at full billing anyway.

b. PRP comment

All PRPs will be able to comment on the relative liability of each other to EPA. My

lawyer and consulting firm will be hard at work.

c. Final PRP list

EPA is supposed to decide on who the final PRPs are no later than 12 months after the RI/FS starts. There is no negative result to EPA if it doesn't, and the RI/FS can start a couple of years after listing of a site.

During all that time until final resolution of my liability (assuming I can pay it), I will have all the economic and financial problems mentioned in my statement.

d. Lender liability exemption/De micromis exemption

The Administration bill takes care of my bank's concerns. It overrules the court decision which overruled the EPA lender liability exemption rule. I have no quarrel with that by itself -- they weren't polluters -- but compare that to how I get treated. Remember, I didn't pollute either.

A handful of banks have been named as PRPs; tens of thousands of small businesses have been named as PRPs. Is policy pure political power?

My lawyers will first try to get me off arguing that I didn't dispose of more than 100 lbs of toxics on site during my tenure as owner -- which is true.

But the bill leaves that decision in EPA's discretion, so if I can't prove that beyond a shadow of a doubt, I may be out of luck. And I suspect the other PRPs will oppose letting me out.

e. MSW/Small quantity generator exemption for small businesses

I just found another exemption in the bill for companies which created less than 100 Kg per month of toxic waste. We were far below that under the prior owners, and are certainly a small business. So my lawyers might try that. But the language appears to only apply if the prior owners' employees had poured the solvents into the regular trash bin for collection by the city or its contractor, not into an on site drain, or specially sent it to an industrial waste disposal site.

I wonder who this special exemption was created for. Was it waste disposal companies who pick up the dumpsters? But what is the public policy justification for the distinction?

f. Expedited Settlement Process

EPA is supposed to offer this to de minimis parties, MSW parties, and parties who allege/prove an inability to pay. Such favored parties can avoid being thrown into the regular allocation process with the "big polluters."

My lawyers will argue that as Chelsea didn't pollute since I bought the company, I should be treated as de minimis. Certainly, zero is less than 1% by volume. But again there is the question of proof, and EPA holds all the cards.

And EPA and the other PRPs are likely to argue that I bought the whole company, including its past liabilities. Just as now, big PRPs have every incentive to keep small and municipal PRPs in the system to provide a political check on EPA's incentive to require very expensive remedies.

Then my lawyers could argue inability to pay, which would surely get me into this category. One percent (1%) of the average NPL site remedy cost of \$25 million is \$250,000, which is far beyond what we could spend. Then I will have to present detailed corporate and personal financial information to prove to EPA I can't pay.

g. Timing/Substance of Settlement Decision

Within 12 months of the start of the RI/FS, and 30 days after publication of the final PRP list, EPA is required to make me a settlement offer.

This can include whatever percentage EPA chooses to offer me, plus whatever premiums it decides it wants from me for a cash-out offer. Those "premia" will cover the uncertainty of what the cleanup will cost (a high uncertainty if this is done early in the process as the bill says it should be), whether it will work, and the Government's "litigation risk," which is limited in the bill for the first couple of years.

NFIB proudly cut some deal that there would be no liability if such an offer was not made by this time. Then it agreed to cut that back to no premia could be attached if the offer was not made on time.

Neither does anything other than to force EPA to send form letters to lots of small businesses making "offers" by the deadline.

Nothing in the bill says the offer must be reasonable or fair; indeed the bill commits all of this to EPA's total discretion.

And how is EPA supposed to make a fair decision in such a short time frame when the standard situation at most sites is that there is a paucity of evidence on who did what when?

And given the criticism that an EPA official will get for letting a serious "polluter off the hook," what incentive will EPA have to let small business out of the system for a reasonable price, if at all?

h. Chelsea's choices

We will have one choice: accept or reject.

If we accept, EPA will see Chelsea as an on-going business, with some profits, and, best case, presumably require me to pay over time, as the bill requires, thereby cutting our ability to finance our growth.

If we reject, we get thrown into the regular allocation process with Allied Signal and the former owner. If so, I get to send my lawyers and consultants up against theirs to argue each of

the Gore Factors. If you have not read these and thought about how you would present proof on them for the conduct of your business over the last several decades (much less a business you bought), then don't vote for this bill.

The "rough justice" the chemical companies talk about to Congress will work fine for them. This system cuts their costs and they can live with more or less at different sites. But for a small business with only one site, this is a life and death issue.

See the EIRF discussion below for a critical, practical issue. As they fight with me (and the Government over the remedy), Allied Signal's lawyers will get subsidized by the Federal Government's EIRF at 40% or higher, while Chelsea's lawyers will only get subsidized at 20%.

I don't think expanded taxes should subsidize anyone's lawyers to fight about Superfund, but this is another example of unfairness.

i. Orphan Share Fund

The only advantage to being thrown into the regular process is a promise (a more formal version of what Congress promised in 1986) that the Trust Fund will pay identified orphan shares.

But there are two problems with this. I understand that the "for sure" Fund, is not "sure" at all, given that the bill does not raise any new money for it.

And, for reasons which escape me, the fund will not apply to my kind of site to cover the share of the owner (long gone) which operated the company from 1940 to 1970, when much of the pollution apparently occurred. Most industrial sites are excluded, even when there are multiple parties which owned the site and the pollution occurred under each of their ownership.

And most small businesses will be very upset to find out that it doesn't apply to a majority of current sites because their RODs were issued before March of this year.

I guess that is how EPA deals with a big promise, when it provides no funding.

j. Timing and Legal Fees Reality Check

By this point I am years into the Superfund process, and at every step of the process my lawyers will have been at full tilt, with environmental consultants having to be engaged at key points.

k. Remedy Selection

They say the bill is intended to solve money issues regarding Superfund, to end the warfare at sites. But all the bill addresses is allocation of costs; it does nothing about PRP money concerns dominating the process. If we went through the allocation process and received a share of whatever costs are later imposed by EPA (as many small businesses would do), we will end up on exactly the same side as the big PRPs. Then we would pay our share of the joint law firm and consultants which would fight EPA tooth and nail on every remedy and other dollar

issue to save their clients money.

That is the real world, and nothing in this bill addresses it.

I. The EIRF

So here I am with an intensive, fact-based, lawyer-driven process over many years.

But proponents offer a "benefit" -- the EIRF -- which will get insurers to pay some of my costs.

Unlike most of my small business colleagues, I am not excluded from the Fund from the outset:

- -- I have my insurance policies since the day I bought the business (although I may be required to pay for disposal before my ownership for which I don't have any policies). Many small businesses don't and won't be able to find them; and
- -- I have not yet been noticed by EPA or a PRP, so I can't be excluded under the "active pursuit of insurance claims" provision which is designed to exclude thousands of small PRPs.

The big PRPs who negotiated this deal didn't worry about those concerns, and they wanted as much insurer money for themselves as possible, so they were happy to acquiesce to insurer demands to cut out as many smaller PRPs as possible.

But I still get little benefit for two reasons.

My company is in Massachusetts. The big chemical companies which negotiated EIRF decided this should be a "20%" state, so that's all Chelsea Clock would get from EIRF.

My fellow PRP, Allied Signal, sat at the table when the EIRF deal was negotiated. Do you think its EIRF percentage is higher than 20%? You bet it is.

And even if Allied Signal's employees broke the law in disposing of the solvents, the EIRF can still pay a share of that cleanup and Allied's legal fees. Only if there was a felony conviction "may" the EIRF not pay.

And the big insurers who negotiated the deal got their big PRP partners to agree that the tax on insurers for this settlement fund should be set up so that all current property/casualty policy holders will subsidize both the insurers and this deal for some big PRPs. They agreed that, instead of being based on the insurers' market share when the policies being settled were written, the tax on insurers should be based on prospective property/casualty market share. This means insurers can easily pass through the tax to all businesses and others with an increase on current policies.

So every entity with a property casualty policy will absorb a significant increase in future premiums to fund this deal cut by big chemical companies and big insurers.

4. The Bottom Line

My banker gets taken care of off the top. My fellow PRP negotiated an allocation process which it can dominate, and a much better deal from the EIRF than I can get.

I am stuck for years in a process where I have to have lawyers fighting for me every step of the way, and, in the end, I am dependent on EPA's good graces for survival.

And what got done for cleanup?



Testimony of Velma M. Smith Friends of the Earth

before the

House Public Works and Transportation Committee Water Resources and Environment Subcommittee

July 12, 1994

Superfund Reauthorization and Groundwater Remediation

Mr. Chairman, Members of the Committee, I am Velma Smith, Director of the Groundwater Protection Project of Friends of the Earth. Friends of the Earth is a national, nonprofit organization that works — in concert with affiliates in approximately 50 countries across the globe — on environmental and energy issues.

On behalf of Friends of the Earth, I thank the Committee, first, for including this special look at groundwater remediation issues in your deliberations and second, for providing Friends of the Earth with this opportunity to comment.

Friends of the Earth Supports Superfund Reform in 1994 -- If Reform Is Protective

Let me say at the outset that Friends of the Earth would like to see Superfund reauthorized in this session of Congress. We believe that Superfund reauthorization in 1994

could correct some of the problems that stand in the way of appropriate and expeditious cleanups and, hopefully, restore public confidence in the beleaguered but critical program. The sooner we can do that the better.

From our perspective, much of what is wrong with Superfund today derives not necessarily from the law but from errors in implementation and from the inescapable fact that the Superfund program is an attempt to deal with the worst of a very bad lot.

Still, there are important and useful things that Superfund reform could accomplish.

It could amend the law in a way that assures that the truly little guy — the guy who has contributed exceedingly little to a contamination problem — can escape a sticky, costly web of litigation and bureaucracy. That goal is, in our view, accomplished by the bill's provisions on de minimis and de micromis parties.

Good Superfund reform could keep the localities which undertook garbage collection and disposal on behalf of their citizens from being harassed with court threats by the very same parties whose toxic waste have made the garbage messes more menacing and more difficult to clean. It could keep the Pizza store owner and the local florist from being sued for putting cardboard boxes and flowers in the landfill. This bill does that with important changes to municipal landfill liability and limitations on third-party suits.

Superfund reform could drastically improve the nation's cleanup program by making the Superfund process more accessible to the citizens whose very lives are affected by the program's decisions. The establishment of the Community Working Groups and changes to the financial and bureaucratic hurdles of the Technical Assistance Grant program in the bill speak directly to that aim. If Congress follows through with appropriations to back up these sections, these reforms will likely net large benefits — to the affected communities and to the program at large.

In the area of remedy selection, Superfund reform should, in our view, assure that the Environmental Protection Agency sets national standards for soil cleanup — helping to answer what is perhaps the most confused and time-consuming aspect of the how-clean-is-clean question at the majority of sites. It could turn aside — with the adoption of national uniform cleanup goals — the troubling but perhaps true perception that the level of Superfund "clean" correlates more with the loudness of your voice, the color of your skin or the assessment value of your home than with the degree of hazard on the site. Superfund reform could specify and clarify the necessary legal authorities for EPA, the states and localities to assure that restrictions to the use of land, water or other resources that are necessarily imposed to protect public health remain in effect and effective over time.

Finally, Superfund reform could and should infuse the program with an enhanced degree of scientific rigor and smoother operation by requiring those PRPs who qualify for technical infeasibility waivers and those who opt for containment solutions to pay into a special fund focused on research and development of improved cleanup methodologies and by encouraging

EPA to test out the use of multi-disciplinary site teams in place of single-person site managers.

In our view, the bill before you falls short of what it could do.

Still, we know that it is July in the second year of the session -- that your time to legislate is limited. Thus, we are not here to suggest to you how to make this a perfect environmental bill. We know that that is not in the cards. Instead, at this point, we offer only the "short list" -- the items we believe must be fixed in order to create an acceptable rather than a good bill. We support reauthorization this year, and we understand that there will be aspects of that reauthorization that we do not endorse.

There are two aspects of the current bill which we believe must be fixed. One deals with covenants not to sue; the other with the use of restrictions on land and water uses as components of site remedies and the bill's lack of effective institutional controls to implement and enforce such restrictions. Concerns we have in both of these areas relate, at least in part, to groundwater remediation issues. My testimony this afternoon does not address these two points in detail, but I welcome your questions on both of these problems with the bill.

Let me first address the central issue before you today: groundwater restoration.

Groundwater is a Critical Resource

Nearly 117 million Americans -- about half the U.S. population -- rely on groundwater for drinking water. Included in that number are 97 percent of the nation's rural households and more than one-third of the 100 largest U.S. cities. In addition, private drinking water wells serve an estimated 37 to 48 million americans. These private wells are generally not subject to any significant water quality testing, and for the most part, the water they provide receives little if any treatment. In many instances, records of the use of these wells are not readily available to either state or federal officials.

In addition to serving as a crucial drinking and domestic water source, the nation's vast groundwater resources also serve other important needs. Groundwater is used for food-processing, for industrial process water, boiler feed water and industrial cooling water, groundwater is critical to the nation's agricultural sector for both irrigation and livestock water. In fact, groundwater is the source of approximately 33 percent of agriculture's irrigation water and 17 percent of freshwater for self-supplied industries.

Over the years, demands on water in general and groundwater in particular have grown. From 1950 through 1980, U.S. groundwater consumption tripled, and water experts in 1980 were predicting another doubling of its use in the period from 1980 until the year 2000. The task of predicting just where and when those future demands will occur should not be underestimated.

Surface Water Is Groundwater in Many Instances

In addition to serving these myriad uses, groundwater serves a critical but often overlooked function in the hydrologic cycle. The quality of groundwater directly affects the quality of the nation's rivers, lakes, wetlands and coastal waters, with an average of about 40 percent of the country's surface water flows originating in groundwater and nearly a billion gallons of groundwater per day seeping into the Atlantic and Pacific oceans. The main sources of water in fully half of the lakes in the United States is groundwater, not surface water inflows.

At a Congressional briefing last year, William Alley of the U.S. Geological Survey explained the dynamic relationship between groundwater and surface water. As Alley noted, water can move back and forth several times between groundwater and surface water in one short stretch of a floodplain, or groundwater can travel 10 miles or more before discharging back to surface water. The case of Idaho's Snake River is not the rare exception: Groundwater, which contributes 6 million acre-feet per year to that river's flow, is the principal component of stream flow. In Florida, according to Virginia Wetherell, Secretary of the Department of Environmental Protection, groundwater provides the baseflow for 90 percent of the state's surface waters.

While the groundwater resource is vast, only a small portion is reasonably available today for drinking water purposes. In some areas, the depth of groundwater and the costs of drilling and operating pumps are limiting factors in water availability; in other areas, natural contaminants, such as iron, sulfate, fluoride, radon or arsenic, present aesthetic or health problems that render large portions of the water undesirable for drinking today.

Groundwater Science is Evolving

Fortunately, our understanding of this critical resource has improved and continues to improve. In a span of time not much longer than a decade, long-held assumptions about groundwater's vulnerability to contamination have been challenged and overturned.

Once-thought sound assertions that a variety of agricultural chemicals would not reach groundwater have been proven wrong, and experts have had to rethink theories behind chemical degradation predictions and to consider the importance of macropores and other preferential pathways that may defy generalization and allow for movement of chemicals.

In the same time line, scientists and regulators have begun to recognize limitations of the abilities of soil to indefinitely hold pollutants, and molecular diffusion -- at one point dismissed as primarily irrelevant to fate and transport predictions -- has emerged as an important factor in some contamination cases. In addition, we have come to learn, through unfortunate experience, of the capability of some pollutants, such as Dense Non-Aqueous Phase Liquids or DNAPLs to move in heretofore unpredicted patterns.

In the last several years, scientists have verified the existence of biologic communities within groundwater regimes — even at far distances from adjoining river beds — and a variety of previously unknown organisms have been found in groundwater samples taken from unscreened wells. In some areas, including the more pristine areas of the Northwest U.S.,

scientists have begun to observe what may be signs of important interrelationships between groundwater zones and the health and diversity of rivers and streams.

It is in this broad context of groundwater's importance to society and its place in a broader ecosystem, the nation's history of growing reliance on groundwater, the evolutionary stage of groundwater science and the limitations on access to groundwater for drinking water purposes that we ask you to consider any alteration of Superfund which would allow for groundwater resources to be "written off" rather than remediated.

In that context we ask you to think about the basic questions behind this Superfund groundwater debate and to consider the workability of alternatives to current policy.

The Current Superfund Law and Policy Is Not Rigid or Unreasonable

Is the current Superfund law too stringent when it comes to groundwater cleanup? Is the bill before you too stringent?

Friends of the Earth would answer with a resounding no, no on both questions. Current law is tough when it comes to groundwater contamination. It is tough simply because it seeks to be protective. The application of the law, on the other hand, has not been overly rigorous.

While many groups and individuals who live near Superfund sites feel strongly that the best available technologies should be used to bring the degraded resources in their communities back to pre-pollution or "background" levels, the law does not mandate restoration to that extent. Currently, the law calls for remedial actions to "at least" attain health-based goals established under the Safe Drinking Water Act and water quality criteria established under the Clean Water Act, "where such goals or criteria are relevant and appropriate under the circumstances of the release or threatened release."

In actual implementation, the Safe Drinking Water Act's enforceable standards or Maximum Contaminant Levels (MCLs) are most commonly chosen as the cleanup standards for contaminated groundwater that may be used for drinking. These MCLs are set based on the treatment capabilities of technologies that are available and affordable for large public water systems.

For the majority of contaminants regulated, the health goals and the enforceable standards are the same. Currently, there are only three non-zero Maximum Contaminant Level Goals that are set lower than the associated MCLs. For contaminants which EPA considers to be known or probable carcinogens, the MCLGs are zero. The MCLS for these contaminants – which are frequently used as groundwater cleanup standards – are not "ideal" from a health perspective but reflect a compromise of health protection with public water system affordability. For example, of the 23 contaminants regulated as carcinogens under the Safe Drinking Water Act, none of the established MCLs provides protection to the level of one in a million cancer risk. The MCLs for vinyl chloride, ethylene dibromide, PCBs and dioxin allow risks of one in 10,000 or slightly higher.

Contrary to the impression created by some in the industrial community, a determination that drinking water standards are "applicable" to a site cleanup — under existing law or under the revisions before you — does not, in itself, dictate the methods or the timelines for achieving the standards. In fact, in numerous cases, EPA has made decisions which we believe are not tough enough when it comes to groundwater cleanup. Mother nature and natural attenuation — along with restrictions on water use — are frequently relied on for achieving standards, and cleanup time frames spanning decades are tolerated when engineered solutions could do better. In addition, for groundwater that is flowing into surface water, the Superfund program relies heavily on the dilution solution.

We believe that the public record shows that EPA is already considering costs – sometimes too heavily – in determining remedies for contaminated groundwater. To further weaken the in-field application of the law would be a grave error.

EPA Does Not Demand the Use of Pump-and-Treat Technology in All Cases

Among the many misimpressions that have been furthered in recent weeks in this acrimonious Superfund debate, is the notion that EPA, once it determines the concentration-based standards which cleanup should achieve, indiscriminately requires the application of pump-and-treat remediation approaches. The impression created has been that EPA — zealously at odds with the mainstream of science — is ignoring data on the significant problems of pump-and-treat.

The impression differs from reality on several counts:

First, EPA does not require pump-and-treat at all sites;

Second, EPA is not substantially out of sync with the scientific community on groundwater remediation; and

Third, pump-and-treat is not, in fact, a worthless technology.

Again, we wish to stress that EPA has not required pump-and-treat for all contaminated groundwater. In fact, EPA has frequently opted for "no action" alternatives and reliance on "institutional controls" to assure that potential water users do not access contaminated groundwater. In some cases, these institutional controls will have to remain in place over long periods of time, and restrictions on groundwater use may severely impact the future growth and economic development of the affected communities.²

In other cases, the primary approach to abating a groundwater problem is removal of the

³Reliance on institutional controls for environmental protection under Superfund is common. In its 1991 survey conducted for the Agency for Toxic Substances and Disease Registry (ATSDR), the National Governor's Association, for example, found 2,302 sites with some form of restrictions on access, land use, groundwater use or surface water use. Of the survey's reported 2,302 sites, 651 are on the National Priorities List.

identified pollution sources, such as barrels, contaminated soils or wastewater. This is frequently accompanied by capping or other containment methods aimed at isolating the remaining hazardous materials.

Where actual groundwater remediation is required, pump-and-treat is frequently selected, either alone or in combination with some other controls.

This reliance on pump-and-treat is not surprising, since — in the words of a geologist with San Jose State University — "[f]or many years it was the only practicable approach for removing and disposing of contaminated groundwater." According to Mackay, Feenstra and Cherry, "[a]lthough it has received great criticism, conventional pump-and-treat is a proven technology for accomplishing plume-front containment, source-zone containment, and plume removal."

In Basics of Pump-and-Treat Ground-Water Remediation Technology, EPA states clearly that "[a]ny time extensive ground-water contamination exists, pump-and-treat systems should be considered [emphasis added]...." EPA goes on to point out that pump-and-treat systems "should be accepted, rejected, or combined with other remedial technologies based on a site-specific analysis." "Properly designed and accurately located extraction wells are effective for containing and/or remediating ground-water contamination, but have limitations," according to EPA.

EPA, Concurrently with the Scientific Community, Has Recognized the Limitations of Pump-and-Treat

Because the history of groundwater remediation is short and because groundwater experts have seen much of their conventional wisdom on fate and transport turned on its head within the last decade, the difficulties inherent of and timeframes required for groundwater cleanup have only recently been recognized.

For a brief time, heady optimism seemed to buoy hopes that groundwater restoration could be accomplished in short order. Clearly, that is not the case — at least not with today's technologies.

From our perspective, it would appear that the EPA has contributed to - not resisted -this growing sophistication and realism about groundwater remediation. In fact, EPA's case
studies reviewing the effectiveness of pump-and-treat have served as a primary source of
information for researchers.

The recently released National Academy of Sciences report on groundwater cleanup technologies is an important contribution to this rapidly evolving arena of science. It offers useful recommendations for improving EPA's approach to cleanup. It cannot, in our view, be read to repudiate the fundamental strategies already embraced by EPA: that is,

- to evaluate the application of pump-and-treat on a case-by-case basis;
- to recognize the confounding nature of immiscible compounds which are lighter or heavier than water and the dominant role of sorption and diffusion in contamination cases;
- to acknowledge the need for technical impracticability waivers in certain instances;
 and
- to promote iterative, phased remediation programs that test and refine conceptual models of groundwater and contaminant behavior.

We have reviewed this report, the EPA pump-and-treat case studies and other technical literature. We have spoken to technical experts as well as affected citizens, and nothing that we have heard or learned leads us to the conclusions drawn by General Electric and other responsible parties who would like to walk away from their restoration responsibilities.

The facts don't tell us that we should give up the ghost on groundwater cleanup, and we urge you to heed the facts and reject a groundwater "write-off" policy that rewards those who have made the biggest pollution messes and stifles innovations and advancement in cleanup technology by removing cleanup requirements.

Rather, we see several fundamental components of a rational groundwater restoration strategy that should be stressed, and we urge this Committee to consider statutory changes and oversight intervention that will strengthen rather than weaken EPA's current approach to groundwater remediation.

Congress Should Leave in Place EPA's Policy on Technical Impracticability Waivers and Take Action to Prevent Further DNAPL Contamination

The contamination of groundwater, according to a 1988 volume of technical papers, "was born of a perception that subsurface systems possess unlimited capacities to accept and degrade organic chemicals introduced either accidentally or intentionally by disposal operations. This perception is now recognized as having been unfounded...."

A noted West German hydrogeologist explains that when a variety of chlorinated hydrocarbons were discovered in groundwater just a little over a decade ago, their presence appeared "rather contradictory." [T]he prevailing opinion," says Friedrich Schwille, "was that CHCs would not be capable, because of their volatilities, of penetrating deep into the subsurface."

So-called "conservative" predictions of contaminant movement in the earth's subsurface, it turns out, were not conservative enough.

So today we find that groundwater contamination - once thought to consist primarily of

localized anomalies -- is widespread. Contamination plumes which extend from just under a mile to six miles from their source are now, according to John Cherry and Douglas Mackay, "common."

Among the chemicals most widely implicated in today's groundwater problems -- which manifest themselves in approximately 60 percent of NPL sites - are Dense Non-Aqueous Phase Liquids or DNAPLs.

DNAPLs, such as chlorinated solvents, wood preservative wastes, PCB oils, coal tar wastes and a variety of pesticides, are denser than water and generally not highly soluble in water. They move in separate phase from the groundwater in the subsurface, and they have defend many predictive models and eluded site investigators, because they can dive deep into the subsurface and remain in pools and fingers that will serve as a continuing underground source of pollution for many years.

"Even with a moderate DNAPL release," says EPA, "dissolution may continue for hundreds of years or longer under natural conditions before all the DNAPL is dissipated and concentrations of soluble organics in ground water return to background." Very small volumes of DNAPLs have the capacity for creating enormous groundwater problems. These problems are very difficult to fix with today's technologies.

Though a halo of dissolved contaminants will form around and move from the contamination which fills pore spaces and sits in pools above less permeable strata, the mass of the contaminant volume will resist movement, even under pumping conditions. The factors that once appeared to translate into a low likelihood of contamination ever reaching the saturated subsurface become the enemies of cleanup.

Thus, predictions of required groundwater pump and treat durations have been wrong, sometimes decades wrong. These errors and the prospect of tens or even hundreds of years of pumping have been translated broadly into a rhetoric that says groundwater cleanup is impossible.

While complete aquifer restoration at DNAPL sites is theoretically possible, full restoration with today's technologies -- at some DNAPL sites -- will undoubtedly take enormously long time-frames that were never contemplated by Superfund drafters. At other sites, including DNAPL sites, restoration -- though difficult -- may be achieved.

Friends of the Earth believes that our response to the DNAPL problem must involve more than giving up the law's goals for groundwater cleanup.

We recommend a DNAPL strategy which

 protects potentially affected water users, including surface water users where groundwater discharges to rivers, streams or wetlands;

- assures that incentives for advancing DNAPL cleanup technologies are not diminished;
- provides for the maximum remediation possible, including effective containment and reduction of the mass of contaminants present in the subsurface as well as remediation of the dissolved fractions of DNAPL plumes;
- greatly improves site characterization efforts to assure that cleanup is optimized and that any containment of the mass of pollutants is fully effective for as long as residual DNAPLs remain as a continuing source of contamination in the subsurface; and
- assures that the PRP and not the local community or the full cost of ongoing containment and monitoring efforts; and
- * prevents further DNAPL contamination of the nation's groundwaters.

To accomplish these goals, Congress should, first, retain Superfund's requirements for groundwater cleanup to drinking water standards but call for a special EPA initiative that will require a rigorous evaluation of sites for residual DNAPL problems.

EPA can, under current law, make technical infeasibility waivers available for intractable DNAPL problems, but we believe it must do so only where there is extensive and compelling evidence that cleanup strategies will not be effective. The granting of a waiver should not, as the NAS points out, relieve the responsible party from all obligations at the site. In our view, containment of the subsurface source area should be required in every instance. Beyond that we believe that each site should be engineered to achieve restoration of the dissolved portion of the plume in a timeframe consistent with source containment as well as reduction of the mass of the contaminants to the greatest extent practicable.

For any site at which such a waiver is invoked, EPA should collect an upfront payment from the PRPs involved that will help to offset the expenses attendant to long term management of the site. We believe that a yearly fee, based at least in part on the volume of the groundwater affected, would also help to assure that the mere possibility of securing technical infeasibility waivers does not create a preverse incentive to worsen a groundwater problem with DNAPLs in order to escape cleanup cbligations. The fee concept was addressed in the NAS paper, and we believe it merits serious consideration by the Committee.

In order to assure adequate assessments of DNAPL sites and to optimize on what can be achieved by today's technology, both in terms of containment and restoration, we recommend that EPA be directed to establish a sitting committee of technical experts drawn from the academic community. This committee should serve as quality assurance advisors not only for Agency-wide DNAPL activities but also for individual site management. Funding for such a committee should come from payments made by PRPs who are granted technology waivers.

These monies should also fund a special initiative to engage the affected communities in decision-making about and monitoring of these sites. We believe that for any site for which DNAPLs are implicated, Technical Assistance Grant funds should be made available -- not on a one-time basis, but on an ongoing basis -- to community groups who wish to follow the progress of site containment and cleanup.

To assure that we do not continue to add to the problems of DNAPLs in groundwater, we ask you to consider amending the law's right-to-know reporting requirements to provide for improved disclosure of all DNAPL releases, adding all appropriate chemicals to the list and establishing very low thresholds for reporting.

We recommend that you draft provisions that will require any PRP with an identified DNAPL site to provide the Agency with a list of all other facilities managing DNAPL products or wastes under its control or ownership. Environmental audits and DNAPL-specific pollution prevention plans for each such facility should become mandatory.

A Reformed Superfund Should Require Thorough Investigation and Sound Monitoring

Much of the literature on groundwater pollution and remediation indicates that an adequate understanding of unique site characteristics is essential to effective aquifer restoration or pollution containment, whether NAPLs are present or not. The literature also indicates that scant or even erroneous site information is not the totally rare exception.

In the words of Clinton Hall, Director of the Environmental Research Laboratory in Ada, Oklahoma.

The world still views ground water...as though the subsurface environment were a big, uniform, homogenous sand box. This is true to a disturbing degree even among practitioners in the ground-water industry.

According to groundwater consultant Joseph Keely,

[C]onventional site characterization approaches have fallen considerably behind the state-of-the-art....Conventional approaches cannot thoroughly characterize the extent and probable behavior of a subsurface contaminant plume; they are, by design, a compromise between the desire to discover key problems at a site and the equal desire to keep expenses to an absolute minimum.

Conventional site characterizations have been wrong — wrong at the Chem-Dyne site in Ohio when a study concluded that groundwater contamination would be discharged to a river, wrong at the Du Pont plant in Alabama when misinterpretations of groundwater flow data led to installation of monitoring wells on the upgradient side of a landfill. Wrong too often, for it is easy to be wrong in dealing with a resource than can move in inches per year or miles per day, a resource that responds to changing points of recharge and discharge, including pumping wells.

Thus, it is important for Congress to resist any Superfund amendments that will short-cut remedial investigations. On the contrary, Congress should look for ways to strengthen EPA's hand when it comes to requiring thorough characterization data, the development and clear articulation of sound conceptual models of groundwater and contaminant flow, and ongoing monitoring, not only of water quality, but also of flow data and other hydrogeologic information that can correct or refine the groundwater models being used. Anomalous data should not be rejected as a statistical aberration but must be evaluated and weighed as a possible new input to the site's working conceptual model.

Congress Should Reject Calls for Containment-Only, Stop-Gap Solutions

Although proponents of a Superfund strategy that would tolerate groundwater dead zones are quick to point to information about the limitations of pump-and-treat and the long-term operational costs associated with extraction remedies, they have not been so quick to point out that some of the technical difficulties involved in restoration can create difficulties for effective containment as well and that long-term containment brings long-term o&m costs as well. Containment is, undoubtedly, easier than restoration but it is not, itself, a simple task. They have not brought to your attention the cases in which containment has not worked as effectively as planned.

Those who support treatment of drinking water only at the point of use have likewise failed to mention the fact that most states have not a few large drinking water systems but thousands of small water systems and many, many private drinking water wells. Nor have they mentioned that fact that the landscape of a number of states is dotted by abandoned wells and boreholes that can serve as conduits for cross-contamination of polluted and freshwater aquifers. They have not, to our knowledge, suggested a workable scheme for assuring that all water users are identified, that increases or decreases in nearby pumping be effectively tracked and controlled, or that numerous small water users be assured of adequate monitoring in the vicinity of a "contained" plume.

Proponents of groundwater write-off have recommended treatment only for water that will be used in the near term, but they have not suggested how it is that groundwater use predictions will be made.

But we believe that if the Committee entertains this short-sighted policy, it must face the fact that a program which chooses to forego cleanup of groundwater that is not expected to be used requires someone to take on this task of prediction. Someone will have to pull out a crystal ball and look into the future, looking into the future at weather patterns as well as growth and development patterns, looking at industrial and agricultural needs as well as drinking water demand, looking at other likely problems with contamination, looking at how groundwater flows will change over time.

We ask this Committee, do you really want to put the Federal government squarely in a position of predicting and then controlling water use? If you accept this clean-it-only-when-you-need-it approach, that is precisely what you will do. Can it work?

Consider the situation in the San Gabriel Valley of California, where contamination is widespread throughout the water basin, contamination plumes cover 40 square miles and pollution has been documented at depths of 500 to 700 feet. In this case, there are about 275 public water supply wells operated by about 45 different water purveyors and about 20 industrial or commercial operations with self-supplied groundwater usage. The basin serves as s drinking water source to more than a million people.

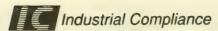
Years of struggle on in this area have revealed that various decisions to close wells, to blend or treat contaminated water, or to relocate wells have affected groundwater flow patterns, drawing contamination into uncontaminated areas.

Yes, cleaning up groundwater is difficult and costly. Yes, there are cases in which a spreading plume will have to be controlled and contained while we press on in a search for more effective cleanup methods. But giving up on cleanup — or even just putting it off — is not really easy or cost-free. In fact, procrastination may ultimately be the most expensive option, creating more and more San Gabriel Valley situations across the country.

Unfortunately, in 1994 it appears not that the Superfund goals of groundwater restoration were off the mark, but that the magnitude of the messes that have been made has been grossly understated and the capabilities of the cleanup technologies vastly overrated.

The course we've charted for groundwater cleanup is not wrong, but much harder and longer than what we predicted. And now reform of Superfund should take place with the benefit of this sobering experience.

I appreciate this opportunity to share our views and I look forward to answering your questions.



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Statement of John F. Spisak CEO, Industrial Compliance, Inc. Golden, Colorado Before the House Public Works Water Resources Subcommittee RE: Superfund Reform July 12, 1994

Industrial Compliance is pleased to join Dr. Ben Chavis and the other members of the Alliance for a Superfund Action Partnership ("ASAP") in urging the Subcommittee to adopt ASAP's "Eight-Point Plan" for comprehensive Superfund reform. That Eight-Point Plan goes to the heart of what is wrong with Superfund in reforming the retroactive joint and several liability regime. Unless and until that retroactive liability is changed no one should expect the program to perform any better than the miserable and wasteful record it has compiled in the past.

From my perspective as an environmental professional working on Superfund remediations, I see first hand how the punitive and legalistic retroactive liability regime runs up costs needlessly as PRPs fight EPA every step of the way in the process. Instead of being a true "polluter pays" system, in reality, Superfund is a "deep pocket pays" system. The net effect is to punish profitable companies for past activities which were, for the most part, lawful and generally acceptable industry practice at the time. And who, in reality, bears these costs imposed on the "deep pocket" company? The company's owners, the millions of individuals and corporate investors including pension funds of the employed and the retired, college endowments, and the portfolios of churches and even environmental groups.

The protracted, punitive pursuit of American industry also has substantial adverse impacts on American consumers and our economy. The billions of dollars in Superfund litigation costs — as well as any ultimate clean up expenses — incurred by American industry are passed along to consumers in the cost of goods and services and in reduced jobs and economic investment. In effect, consumers are already paying an invisible Superfund "tax" buried in the price of goods and services, higher unemployment and reduced economic competitiveness which totals billions of dollars each year.

Until Superfund is changed these invisible taxes will continue indefinitely. Moreover, the huge financial resources dedicated by American industry to fighting the stark inequities of Superfund are diverted from far more socially productive enterprises such as research and development of new products, investment in capital goods or facility expansion, and increased employment, all of which could lead to enhanced economic welfare of the Nation.

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In most cases, companies are willing to pay their reasonable share of the cleanup costs. But they are vehemently opposed to paying the entire cost or a disproportionate share of cleanup, especially when their practices may have been legally or environmentally acceptable at the time of the disposal. The problem is severely exacerbated by the fact that these companies must pay the so-called "orphan shares", attributable to entities either no longer in existence or incapable of paying.

Superfund's stimulation of lawsuits is wholly predictable. Massive litigation is America's normal reaction to victimization by government. Business owners rightly demand accountability from corporate boards, high financial returns on their investments and security for their investments; government impositions on any of these demands are vigorously litigated.

Indeed, Superfund's structure, unfairness and punitive attitude toward the "polluter" virtually compels the stewards of American business to defend and litigate on behalf of their shareholders, investors, and owners. Unless Superfund's structure and administration is substantially changed, American business should not be expected to change its litigious behavior.

ASAP's Eight Point Plan directly resolves the threshold, crippling problem caused by retroactive liability by eliminating such liability for many sites prior to 1987. The Eight Point Plan can do that since it includes a funding scheme that is both fair and adequate and thus allows retroactive liability to be supplanted. No longer will there be litigation over who was at fault, who should pay, how expensive should the remedy be, how clean should the site be. Instead the money spent in Superfund will be applied to actual site cleanup, speeding remediation at more and more sites across the nation.

Reforming retroactive liability makes the other elements of the Eight Point Plan possible: prioritization of expenditures based on health risks; enhanced community participation; remedy selection reform; and enhanced broad based funding. But without such reform of retroactive liability none of these objectives are attainable.

In contrast to ASAP's plan, the Administration's proposal (H.R. 3800) falls far short of what is needed and virtually guarantees continuation of the sorry and wasteful record posted by Superfund over the last 13 years. H.R. 3800 does not accelerate remediation; it adds more litigation in its 2-3 year allocation process. The Administration's proposed cost allocation process is unfair to small and large businesses in numerous ways: before RCRA's record keeping requirements in 1987 there existed no records upon which to make fair allocations; lawyers still need to be hired and transaction costs will continue; some "favored" groups get limits on their allocated shares...even if their polluting activities were criminal.



Furthermore, the Administration adds no net additional money for actual cleanup after consideration of all the other costs it creates. The Administration's plan give EPA even stronger, punitive legal authorities to use against PRPs who may challenge the agency's dictates.

H.R. 3800 is a major disappointment; it is a menu for "no change" when major, structural change is needed. As a member of ASAP we look forward to working with the Congress to fashion Superfund reform that is worthy of the effort along the lines of the Eight Point Plan

* * *

Industrial Compliance is a national consulting, engineering and environmental services company, headquartered in Golden, Colorado with offices in Dallas, Houston, Knoxville, Little Rock, Monterey Park, Overland Park, Phoenix and Sacramento. For further information contact John Spisak, 303-277-1400.

ASAP

ALLIANCE FOR A SUPERFUND ACTION PARTNERSHIP

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July 12, 1994

U.S. House of Representatives

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I. OVERVIEW

We appreciate your inviting this panel here today to share with you our view on Superfund reauthorization issues. We are encouraged that your subcommittee is holding this series of hearings that will produce a more balanced and open debate of all of the proposals seeking to reform this fundamentally flawed program.

Earlier this year, a diverse group of citizen advocates, local governments, environmental and public health professionals, companies and associations realized that the debate on Superfund offered us a chance to find common ground on an issue which has historically been very divisive. That shared belief evolved into the Alliance for a Superfund Action Partnership (ASAP).

Other Superfund stakeholders may have joined together to advocate one reform measure or another, but none can come close to matching ASAP's numbers or diversity: the NAACP, Local Governments for Superfund Reform, the American Furniture Manufacturers Association, the City of Atlanta, the Society of Independent Gasoline Marketers of America, the National Food Processors Association, The Grocery Manufacturers of America, Johnson Controls, Inc., the American International Group, Texaco, Phillips Petroleum, and many others in a variety of fields. A full list of current membership is attached as an addendum to this testimony.

Our group did not start out constrained by past ideology or commitments to old slogans and principles. To be sure, we did start out from very different perspectives, but we shared a common purpose -- to make Superfund work. Unlike others, we did not merely ask what we thought would be politically expedient, and we did not take any options off the table.

We are here to tell you that the entire Superfund debate has shifted in the past few weeks.

First, the much-ballyhooed "consensus" surrounding the Administration's bill has proven to be non-existent -- as evidenced by the 6-4 vote in Senate Superfund Subcommittee. That "consensus" -- if there ever was one -- was among those invited to the table when this bill was crafted. Regrettably, we were not invited to be part of that process, and neither were most of the affected small business community or many other constituencies. We continue to be excluded from ongoing negotiations on this bill.

Second, new voices have joined the growing chorus for fundamental reform. We are referring to your colleague Representative Bill Zeliff, who along with Senator Robert Smith, recently introduced the Comprehensive Superfund Improvement Act of 1994 (H.R. 4161/S. 1994). Those who have penned the Administration's bill largely dealt with Washington insiders. The Smith-Zeliff bill is derived directly

from more than a year of discussions with Superfund stakeholders and experts in New Hampshire, not Washington. These are people who have seen the real Superfund, not its theories.

In many ways the Smith-Zeliff bill is responding to some of the same practical imperatives which ASAP has recognized. Their bill grapples directly and honestly with Superfund's debilitating and wasteful approach to financing, and dares to address head-on Superfund's Achilles' heel — retroactive liability. Based on their grassroots discussions, they recognize that fundamental reform is required. Here are two Republicans, supported by many others on the Public Works and Transportation Committee, who are not afraid to say that increasing business taxes to fund cleanup is a far more efficient way to protect the public than the law we have today — and it is better for business.

More and more members of the business community have come to the same conclusion. Many businesses have added their voices to ASAP's membership in expressing their willingness to accept increased business taxes in exchange for eliminating retroactive liability. Large and small business groups alike believe that ASAP's financing approach is fairer and more efficient. In February of this year the Business Roundtable supported "if necessary, an increase in the Environmental Income Tax (up to a doubling)" for retroactive liability reform. More recently, the U.S. Chamber of Commerce's Small Business Legislative Council endorsed elimination of retroactive liability in return for a broad-based trust fund. We believe that this is not only politically feasible, it is the right thing to do for all Superfund stakeholders.

Liability and financing are the places to begin in changing the focus of Superfund so it can address public health and community needs. Comprehensive Superfund reform must also address the other six points of ASAP's Eight Point Plan -- which is attached as an addendum to our testimony -- issues such as public health focus, community empowerment, site selection and prioritization, minority participation, and community development. The ASAP representatives here today can speak in greater detail about these components of our proposal.

While the political landscape surrounding Superfund reform has shifted, the Committee is here today seriously considering legislation which will keep this failed system in place. Because the Administration began its reauthorization with a narrow view of what it could discuss and who could participate, your Committee is now left with this bill, H.R. 3800, that falls far short of meaningful reform. Moreover, the bill contains provisions that would further complicate the legal warfare and divert dollars that could be used for cleanup.

ASAP appreciates the efforts of the Administration and the National Commission on Superfund, not only to address Superfund's problems but to address additional environmental justice concerns. As you may know, NAACP Executive Director and CEO Dr. Benjamin F. Chavis, Jr., who is also ASAP's Executive Director, was a

member of the National Commission. But Dr. Chavis and Michael McIntosh, the Commission's founder (who will testify as part of ASAP's panel), could not support the Commission's findings because they did not represent fundamental reform of Superfund.

A few of the specific suggestions raised in ASAP's Eight Point Plan have been incorporated in H.R. 3800. However, the bulk of ASAP's concerns have not been adequately addressed in the proposed legislation. Our written testimony goes into great detail about ASAP's concerns with the H.R. 3800. In short, the fundamental flaws with the bill are as follows:

- The bill calls for new programs, but doesn't provide a way to pay for them.
 Less money will be available for cleanup.
- Money is merely shifted from one group (insurers) to another (certain PRPs).
- The bill fails to refocus Superfund on public health, which should be the program's highest priority.
- It builds on Superfund's flawed foundation of retroactive, site-specific liability.
- It makes minor liability changes to favor certain parties while otherwise relying on an unfair, time-consuming and non-binding cost allocation process which only adds further delay, litigation and inequity.
- It fails to provide real relief to all but the most favored classes of small businesses caught up in Superfund liability.
- It perpetuates the complicated, inflexible, top-down remedy selection system
 which is premised on mistrust and conflict due to the current law's sitespecific financing system.

If these issues are not addressed and you enact this bill as is, we are absolutely certain in saying that you will come back here in a few years, long after the congratulations and smiles at the bill signing, explaining to citizens, but probably not very persuasively, what went wrong. In other words, you may be able to pass a bill this year, but if it does not fundamentally reform Superfund, you most assuredly will not solve the problem.

It's time to make fundamental change in Superfund. Our communities are watching and waiting to see if Congress has the courage to make the bold changes necessary to return Superfund to its intended purpose.

II. CONCERNS WITH THE ADMINISTRATION'S BILL

By failing to address Superfund's fundamental flaw — retroactive, site-specific liability — the Administration plan is itself fundamentally flawed. No amount of tinkering with the current system will bring to life the principles embodied in ASAP's Eight Point Plan. Too much of what needs to be done is inextricably entwined with finding a more efficient and effective way to finance site cleanups. Until that happens, priorities will of necessity stay focused on site-by-site fundraising — not the protection of public health and the environment. Following are ASAP's major concerns with the Administration plan, listed by Title.

Title I - Community Participation and Human Health

Community Participation: Although these sections of the bill are consistent with ASAP's ideas, they lack two vitally important ingredients — funding and changing the current Superfund system so they can really work. As it does in other important areas, the bill calls for new programs, but fails to provide a way to pay for them or a new structure which would allow them to function. Instead, it tries to graft reforms onto the failed structure of the current law.

- The limitation on total TAG grant program spending is expanded to about \$60 million per year, with no new financing source. If this is spent, trust fund cleanup spending would have to drop by a comparable amount. Similarly, the CIAOs are authorized at up to \$50 million per year. (Sec. 102)
- Because the conflict-based financing system will continue at each site,
 effective community participation will be very difficult, whatever the law says.
 Money remains a dominant concern of the process. This means the distrust among
 community members, PRPs and the government spawned by today's program will
 continue, as will the current litigation mentality where lawyers control the
 communication and negotiating process.

One key aspect of this is land use decisions. These are critical to PRPs' concerns about saving costs of cleanup. The bill requires that the President give "substantial weight" to Community Working Group opinions on future land use. Yet, with PRPs still required to pay the costs at most sites, the incentive to view cleanup as a "free good" will continue. What incentive will CWGs have to recommend less than the most expensive remedy? Why would they (or EPA for that matter) subject themselves to community criticism for getting a "second best remedy?" (Sec. 102)

 The bill does not address the community empowerment agenda of ASAP's Eight Point Plan, which calls for remediation skills training for affected citizens and for the involvement of minority businesses in cleanup. There are no provisions to focus current federal and state health, development and educational programs on communities harmed by toxic waste.

Human Health: The bill does not refocus Superfund on public health, which should be the program's highest priority.

- While the bill calls for more public health assessments, it does not appropriate new money for ATSDR or any other agency to administer them or any other proposed health initiatives. ATSDR's authorization is increased to \$80 million, but without any increased financing source. (Sec. 703)
- Therefore, the only way to implement any of the health projects in the bill would be to reduce trust fund cleanup spending.
- The bill calls on EPA to publish an Environmental Justice Report every two years but establishes no penalties if EPA ignores the recommendations in that report. (Sec. 102)
- The number of public health professionals involved in the cleanup process will not increase and procedures for assessing health effects and amassing health related data will not be improved. Full scale health investigations now are done at the rate of only 15% of eligible sites per year.

In a token gesture, each EPA Regional Office must identify five sites with environmental justice concerns and evaluate them for inclusion on the NPL within two years of enactment. (Sec. 103)

 The bill incorporates some of ASAP's suggestions on new factors to be considered in an NPL listing decision, but it does not provide for prioritization of action and spending based on these factors. Those decisions will continue to be dominated by the vagaries of the presence or absence of solvent PRPs, negotiations, and litigation.

The bill does not provide for review of past site rankings based on the new factors, much less the funding to do so. (Sec. 103)

• There are no provisions to focus current (non-Superfund) health, development and educational programs on communities harmed by toxic waste, a key provision of ASAP's Point 8.

Title II - State Roles

The bill provides a larger role for qualified states, a goal with which ASAP agrees. However, it allows this role only if the states take the entire federal statute and apply

it in their states, and then on key issues EPA retains direct, site-specific veto power. For example, states cannot enter final settlements with PRPs (covenants not to sue) without EPA both being part of the negotiations and approving the agreement.

Title IV - Liability and Allocation - Liability

Rather than directly confront the problems caused by Superfund's reliance on site-specific liability and reform the law's financing mechanism, the bill specifically says that nothing in the bill shall "affect in any way the principles of retroactive, strict, joint and several liability under this title." This would be the first time most of these words have appeared in the law.

The bill makes minor liability changes to favor certain parties and otherwise relies on an unfair, time-consuming and non-binding cost allocation process which only adds further delay, litigation and inequity to Superfund. In the final analysis, the bill basically retains the status quo, doing little more on liability than:

- continuing the failed system of retroactive liability with all its harmful effects;
- adding a complicated allocation system which will serve mostly to shift costs from some big PRPs to others; (Sec. 409)
- raising and allocating hundreds of millions of dollars per year from new taxes on the insurance industry solely to reduce the past and future liability of solvent PRPs: (Sec. 902)
- giving special treatment to certain parties, including corporate and municipal generators and transporters of municipal solid waste (MSW), banks and the federal government; (Sec. 403 & 605)
- expanding Government enforcement powers; and (Sec. 402)
- ignoring the huge and growing issue of natural resources damages.

As a result of those liability "reforms":

 Government transaction costs will go up substantially, because EPA now will have to conduct comprehensive PRP searches, pursue all non-settling parties, and conduct separate and "expedited" cost allocation and cash out processes for favored parties.

The Department of Justice, which now devotes more resources to Superfund than to all other environmental laws combined, will have even more Superfund work. (DOJ, unlike other government programs, is paid directly by EPA for its enforcement efforts from the Superfund). (Sec. 408 & 409)

- Although recovery from PRPs of EPA oversight costs is capped at 10% of PRP response costs, this cap will not apply to government transaction costs and other indirect costs. (Sec. 404)
- No new funds will be provided for cleanup or other priorities, and cleanup funding from the Trust Fund will probably be reduced due to increased government transaction cost demands.
- No incentives will be created for the economic development of contaminated areas, except one useful provision limiting liability of new purchasers of contaminated property.

Enforcement Expansions

- EPA can issue a Unilateral Administrative Order "without a finding of an imminent and substantial endangerment." (Sec. 402)
- Section 402 of the bill creates a catch-22 which effectively eliminates PRPs' ability to challenge any Unilateral Administrative Order. It would allow a PRP only two defenses to these orders. The first is a reasonable belief by the PRP that it is not liable and anyone who knows Superfund will admit this is virtually impossible to prove. Moreover, the bill goes on in "(C)" to say that a ruling by the neutral allocator on liability "shall not affect or constitute a basis for a determination of 'sufficient cause'." In other words, EPA can still order a PRP to conduct and/or pay for the entire cost of cleanup even if the allocator has determined that the PRP should have no share of the costs.

The second defense against a UAO is to get a federal court of competent jurisdiction to rule that the order is inconsistent with the national contingency plan (NCP). The problem here is that Section 113's ban on pre-enforcement review, which has not been changed, states that no court shall have jurisdiction to make such a ruling until EPA has sued the PRP. By the time any court had jurisdiction to judge an order's consistency with the NCP, the PRP would likely face hundreds of thousands of dollars in penalties, and perhaps treble damages, for non-compliance with that order.

Much has been made of the promise that the Fund will reimburse PRPs who
do cleanup work for the shares of recalcitrant parties. But for parties who perform
work pursuant to UAOs, this will only happen when 1) the "work is completed"
and 2) "satisfactorily." No interest would be paid unless the recalcitrant pays
interest.

This approach also applies to orphan share payments from the Fund to parties doing the cleanup work.

- Liability is expanded in many areas from hazardous substances to now include "pollutants and contaminants." (Sec. 404)¹
- For first time, EPA is granted authority to promulgate "legislative regulations" to determine the scope and terms of all provisions of the Act. (Sec. 407)

Future Liability (Sec. 403)

EPA and DOJ constantly argue that the current liability system provides powerful incentives for proper waste disposal. It does, although that has nothing to do with liability for historic disposal activity. ASAP's plan would not change liability for current and future disposal. Incredibly, however, the Administration bill would make future incentives for proper waste disposal weaker than they are today. The bill includes a huge loophole that not only grants special treatment for past disposal by generators and transporters of MSW, but limits their liability for future disposal.

- The aggregate liability at a site for all generators and transporters of MSW cities, collection firms and companies which generate such waste would be capped at 10%. This would apply not only for past disposal but also for future disposal.²
- Therefore, the parties most in control of generating and shipping waste to the large, co-disposal sites will be the least accountable for their actions, not only in the past when environmental hazards were much less recognized, but also today and tomorrow when we know the consequences of improper toxic waste disposal.
- Few understand that the "MSW cap" includes small quantity generators of toxic waste. Retroactively <u>and</u> prospectively, parties which produce up to <u>2640</u> <u>pounds</u> per year of toxic waste and discard it through a municipality's regular MSW pickup system have their Superfund liability entirely eliminated if they are "small businesses." Those that don't qualify as a small business qualify to be included with all other "MSW" parties under the 10% cap. (Sec. 605)
- Cities also get full liability exemptions for licensing others to collect their waste and for failure to maintain public facilities such as sewage systems (Sec. 403).³
- A long amendment removing liability for some future actions by some recyclers has been added to S 1834, but there is no past relief for the same conduct. (Sec. 410)

¹ HR 3800 only. This language is deleted in S 1834.

² In the Senate bill (S 1834) this cap does not apply to generators and transporters of sewage sludge.

³ The Senate version (S 1834) eliminates the language limiting the liability of municipalities stemming from ownership of sewage lines.

Title IV - Liability and Allocation - The Allocation Process (Sec. 408 & 409)

In the name of "efficiency" and "fairness", the bill layers on a "fair share" cost allocation process at each site run by a neutral third party based on the "Gore Factors." These require detailed factual information about the disposal practices of each PRP, which do not exist at most sites before the mid-1980s.

The bill's focus on allocation of costs among PRPs addresses only part of the problem of the dominance of finance issues at sites. Even after allocation is complete, PRPs will still have strong incentives to fight over every cleanup issue which increases their costs. Indeed, they can pool their resources and provide more legal and engineering "talent" to fight the Government. PRPs may save transaction costs in fighting the Government, but the delays and distortions of the program due to such battles will not end.

- The bill creates an enormous incentive for PRPs named by EPA to bring as many new PRPs as possible into the system, right up front. This will expand the current PRP "community" substantially. There are no changes in the current law, which makes PRPs "guilty" unless they have absolute proof that they had no connection to a site.
- While EPA will now have to conduct major PRP searches, large PRPs will do the same, because they will save money by finding every possible party and forcing them into the system. Today this happens over time; under the bill it will happen earlier in the process as part of a compressed procedure.
- The allocation process only sets shares, long before full costs are known if the bill works as advertised. There are no cash out requirements for any party other than de minimis parties.
- EPA is supposed to have the allocation process completed within 18 months of the commencement of the RI/FS, but there are no consequences to it if this is not done. (And it still has the authority to order any PRP to perform all the work at a site; although EPA might eventually have to reimburse the PRP for payments over its fair share.)
- EPA has total, unreviewable discretion over settlement offers and premiums for cash outs (except litigation risk premia).
- Litigation risk premia are set by statute at levels not to exceed 20% of the PRP's share. But after four years, EPA can change them to reflect its "actual experience" regarding "litigation risk faced by the US in proceeding against non-settling parties."

It is not clear what the definition of litigation risk is. If it is the chance that the Government will not get 100% of cleanup shares from solvent private parties,

this premium is likely to rise substantially in four years, given Government's track record in cost recovery actions.

- Large PRPs, particularly large chemical companies, will pay less than today, with
 the costs shifted to others. In the crash, "rough justice" allocation process, these
 sophisticated companies will be better able to dominate the process, pushing costs
 onto smaller, less sophisticated PRPs.
- There is a large question of how parties will provide proof of such Gore Factors as negligence, which is far more complicated factually than who shipped what to a site (where the battle centers today).
- There also is a big question of what a "fair" allocation between generators, transporters and owner/operators is. The bill provides no guidance, leaving this to be fought out at each site.
- The so-called "neutral" allocators cannot be impartial judges. Their livelihood is dependent on politically satisfying EPA, which would have almost total control over the selection of allocators under the elaborate process established under the bill. EPA will oppose allocators who tend to rule that there are high orphan shares at sites, providing an incentive for allocators to routinely under-allocate liability to the orphan share.
- EPA will be able to exert significant control over the allocator selection process.
 To begin, the bill lets EPA fully control which parties get on the list of approved allocators from which PRPs select an allocator, on a one PRP, one vote basis. Then, the bill gives to EPA all the identified but insolvent or defunct PRP (orphan share) votes. Therefore, at sites with many orphan parties (exactly those where decisions on how much to allocate to the orphan share are critical), EPA may be able to control exactly who is selected as allocator.
- Two additional drains on current Trust Fund cleanup spending are created. First, once an allocation is done EPA is supposed to fund the shares of recalcitrant parties on a current basis. Second, it must expend transaction costs to pursue them (which today it forces PRPs to incur). No new financing source is created to address these new demands on the existing Trust Fund.
- EPA says there are major disincentives for parties not to settle under the new system. But subsection (3(D)) says that the liability of non-settling parties at a site is reduced by the payments of those who settle. The more parties settle, the less risk there is to non-settling parties if they continue to fight. (The same provision is in subsection (p)(1).) Under current law, non-settling parties don't have this protection.
- Subsection (3(E)) provides for reimbursing PRPs who settle with the Government for response costs in excess of their fair share, and says this "right" is not dependent

on the U.S. recovering money from recalcitrants. The Administration has not explained how much this will cost, but whatever is spent for this will reduce funds currently available for Trust Fund cleanup priorities. Like orphan share payments, this reimbursement is severely limited for parties operating under UAOs.

Title IV - Liability and Allocation - Small Business and Other Parties (Sec. 408 & 409)

EPA is instructed to conduct an "expedited" allocation process for certain parties. This means it must duplicate much of the work of the neutral allocator for the benefit of de minimis parties, MSW generators and transporters, and parties with a limited ability to pay. To make a fair de minimis offer, it must determine how much waste is at a site and how much each party contributed. It cannot calculate shares unless it knows the whole.

In addition, to make the required cash out offers, EPA must very early in the process judge the overall costs of cleanup and the risks of remedy failure to calculate a cash value for these shares and add fair premiums. It is supposed to determine all this in less than two years.

- The new system creates an incentive for already identified PRPs to identify and nominate for liability all possible PRPs very early in the process. More small businesses will be drawn into the liability morass earlier thus some small businesses will actually end up being liable for a longer time period than they are today (where they are drawn in by EPA and bigger PRPs over time).
- Unlike the regular allocation process, de minimis status will not be based on the Gore Factors, but on volume alone, ignoring toxicity, culpability, and control over disposal. This will hurt parties with higher volumes and lower toxicity, while helping parties with high toxicity and low volumes.
- The bill sets 1% by volume as the de minimis standard, but EPA has complete discretion to change that percentage (up or down), overall or at individual sites. Where it wants to keep small contributors in the process, it can drop the percentage. Where it wants to only focus on a few large PRPs, it can increase it.
- The bill does exempt all very small business PRPs whose liability stems entirely from municipal solid waste (i.e. pizza parlors), and de micromis amounts of toxics, but very few of those are in the system (despite press coverage to the contrary). In fact, the definition of "MSW" in the bill includes companies which generated up to 220 lb. per month of toxic waste. (Sec. 403)
- The Administration bill encourages separate liability allocation processes for large and small PRPs. Thus, small PRPs might not have to be in the same room with the big PRPs' lawyers, who will thus not have the opportunity to argue for allocating

more liability to the small PRPs. But there is no assurance that EPA will actually carry out a separate small business liability allocation process. The Administration bill repeats the mistake of the 1986 Superfund reauthorization, which encouraged — but did not force — EPA to conduct de minimis settlements and has had little effect. Also, because few small businesses have waste records from before the mid-1980s, they will not be able to prove their waste contribution, much less the other "Gore Factors", while big PRPs will fight hard to keep them liable. And the allocation of waste shares to small businesses will be entirely subject to the judgment of EPA, as will cash out "premia."

- There is no requirement that forces EPA to complete de minimis settlements quickly and fairly. Last February, a few small business and environmental groups announced a "deal" to alleviate the Superfund burden on small business in exchange for support of the Administration's Superfund bill. While that "deal" was not considered a good deal by most small and medium-sized business representatives, the latest Administration bill/Swift bill removed the key benefits of the deal as advertised at the time by its authors.
- The strongest provisions of the "small business deal" were the firm limits placed
 on the amount of time that could elapse before EPA offered small business de
 minimis PRPs a cash out settlement. The time limit had teeth, because if EPA failed
 to make a de minimis cash out offer within 10 months of the start of the allocation
 process then the de minimis PRPs would be relieved of <u>all</u> liability.
- The new Administration bill eliminates this key mechanism that would protect de minimis parties from lingering contingent liability, and extends the statutory time limit for making de minimis offers. The only remaining limitation on EPA is that it cannot collect a premium (in addition to a "share") from small business de minimis PRPs if it does not make them a settlement offer within 90 days (30 days + 60 days grace period) of issuing the final PRP list. Further, there is no penalty for EPA if it does not issue the list in a timely manner. Therefore, there is no hammer to force EPA to start the clock ticking on the de minimis premia deadline.
- But even the "deal" missed a key point, which is preserved in the current bill. To
 preserve its ability to assess a premium on de minimis PRPs, EPA need only make
 "an offer" to that group of PRPs. There is no requirement that the offer be made in
 good faith, be based on a rational allocation, or have a rational premium attached.
- EPA staff have resisted doing de minimis settlements for years. Will this bill change that? The key to the answer is EPA's incentives. It has had Congressional approval for almost everything the bill suggests since 1986. Why has it not done these things? There are no rewards in the system to EPA staff for getting small parties out. The rewards are for cleanup and its causative agent: fundraising. Small business offers neither, and yet the costs to EPA of de minimis settlements in staff time are great. And bigger PRPs believe they are harmed by special treatment of

small players. Keeping these small players in the system helps the politics of negotiating with EPA over overall costs.

The new bill changes none of these incentives.

Like today, larger PRPs will pressure EPA to resist de minimis settlements until the final cost of cleanup is known. (Under the bill, amounts not paid by de minimis parties will be borne by other PRPs.) As a result, EPA more than likely will do one of two things: (1) offer very high premia to de minimis small businesses, or (2) where there is any doubt about shares, throw as many parties as possible into the overall allocation process. Government officials seldom are attacked for being conservative in such matters.

Whichever it chooses, small business PRPs will be the ones to bear the brunt of this continuation of the retroactive, site specific liability financing scheme which has caused so many economic hardships for small business owners nationwide.

• EPA will consider the ability of small businesses to pay. After going through all of the above, PRPs of under 20 employees and annual gross revenues of less than \$1.8 million or a net profit margin of less than 2% will be given the opportunity to present to EPA their financial, operational, and credit documents — and probably those of their owners as well. If EPA finds that these businesses do not have — and cannot borrow — the money to pay their assessed liability and premium, EPA is supposed to reduce their liability to the maximum that they can possibly pay over time pursuant to a payment schedule.

The small business group that negotiated with the Administration claimed that the bill puts the burden of proof on the Government to show that these businesses have the ability to pay. But, as Elliot Laws of EPA testified to the Senate, and the language of the bill appears to say, the burden of proof will be on the small businesses.

The bill says the government must run a calculation of ability to pay for each PRP, presumably according to a financial computer program it establishes. Small businesses will have to submit data to EPA on their finances, presumably according to a format and in the detail EPA requires. Small businesses which have applied for bank loans can see what is coming: full financials, tax returns, and assets for the company, and the same for each of the owners.

Mr. Laws testified that EPA would rely on the expertise of the Antitrust Division of the Department of Justice as to what the standards for that calculation of "inability to pay" should be. He did not explain what expertise that Division has about small business finances.

Title IV - Liability - Orphan Share Fund (Sec. 409)

The bill would set aside \$300 million from existing revenues — not new sources — for an "orphan share fund" which would pay the shares of identified parties who are "insolvent or defunct," plus MSW generator and transporter shares that exceed the 10% cap and excess shares of parties with an inability to pay. This fund would not be subject to an annual appropriation like the rest of the Superfund.

Four serious concerns with this provision are:

- 1. It doesn't change the warfare over money at sites. While being forced to pay orphan shares is a common complaint of PRPs, having the government pay some of them will hardly alter the basic warfare dynamic over financing at Superfund sites. Once the cost allocation is completed, PRPs will fight just as hard over the remedy to reduce its costs if they as a group have to pay 80% of the costs as they do today over 100% of them. Further, the orphan share will give PRPs a new incentive to hire investigators and lawyers to identify and accumulate evidence against insolvent parties.
- 2. It's the highest funding priority in the law: This set aside -- Superfund's only mandatory appropriation -- would be used to reduce the liability of viable PRPs, who currently pay these orphan shares. Not a dime would be used to increase cleanup or fund other priorities.

Clearly, the Administration is putting saving businesses money ahead of cleanup, as well as the public health and economic development of affected communities.

As a practical matter, the Appropriations Committees are likely to lump the basic Superfund with this new fund, thereby harming the basic Superfund. Indeed, the Senate Appropriations Committee has made it quite clear to the bill's proponents that they will not allow or provide a "mandatory appropriation" for this purpose. Their position is that money for orphan shares will be subject to the annual appropriations process. It will be in one pot with all other Superfund money, and with all other claims from that Appropriation Subcommittee's jurisdiction (e.g. NASA, VA). This will put spending on orphan sites and other priorities in conflict with PRP desires for reduced liability.

3. Its size is artificial: The annual amount is kept low by limiting its use to a subset of what most consider to be "orphan shares." Rather than covering everything at a site not caused by an identified, solvent PRP, it only covers the shares of identified, non-viable PRPs and some of those whose liability is limited.

Even with this reduced definition, \$300 million may not be enough.

- Using the Gore Factors to allocate shares will increase the shares of parties which (1) controlled disposal and (2) did not use "due care" in so doing. Such parties are most likely to be businesses which controlled disposal/owned sites. These very typically are smaller businesses now out of business, whose share would be picked up by the orphan share fund.
- The orphan share fund also will pick up the excess shares of parties whose liability has been limited, as noted above.
- 4. It appears designed not to pay out much money. First, it authorizes orphan share funding only for sites where RODs are entered after February, 1994 (although the 10% MSW cap and other special liability exemptions apply at all sites). Therefore, at sites with RODs before that date, all the excess shares of parties which benefit from the special exemptions and caps will be placed on the other PRPs.

To keep the fund in check, the bill also bars orphan share financing for any site — such as a manufacturing or mining facility — with successive ownership and only one contaminating party at a time. This will exclude most industrial facilities from coverage from the orphan share fund, even if the primary contamination was caused by prior owner/operators who are now insolvent or defunct.

Additionally, as noted under the allocation section of Title IV, EPA will have almost total control over the allocator selection process. To protect the orphan share fund, EPA most likely will oppose allocators who tend to rule that there are high orphan shares at sites, providing an incentive for allocators to routinely under-allocate liability to the orphan share.

Title V - Remedy Selection

The latest compromise between various stakeholders as incorporated in the bill continues the complicated, inflexible, top-down system which has been developed over more than a decade. This is premised on mistrust and conflict due to the current law's site-specific financing system.

- Because many stakeholders perceive that PRP financial concerns dominate remedy selection at sites, enormous pressure is created to centralize decisionmaking at the national level and avoid site-specific solutions. These stakeholders want inflexible national cleanup rules in order to remove discretion from on-site Government personnel who, in negotiating to get PRPs to pay for cleanup, might be influenced by PRP financial concerns.
- Imposing national solutions is in fundamental conflict with the goal of local public participation, and moving to a more cooperative system including all parties.
- Major issues, especially the national risk goal and a national risk protocol, are "punted" to a "consensus negotiated rulemaking" to be convened by EPA after passage of the bill. These high-stakes negotiations will include many parties with radically different positions. They will delay issuance of new regulations -- and impact on cleanup -- for years, even if they are not challenged in court. (Sec. 501)
- Although the "AR" of ARARs (Applicable or Relevant and Appropriate Requirements) is eliminated, states can re-enact tougher requirements without limitation. (Sec. 501)
- Only with Fund-financed cleanups is EPA required to balance the value of expenditures at a site in protecting public health compared with use of such funds at other sites.
- The future use factor which applies to land (e.g. reasonably anticipated future uses
 of site affects remedy), does not apply to ground water remedies. (Sec. 502)
- Notwithstanding the advertisements for the bill that permanent remedies will no longer be favored in all cases, the bill explicitly precludes cashout offers and covenants not to sue to non-de minimis PRPs where containment remedies are used (Sec. 408).

Title VI - Miscellaneous

 The Administration bill limits Federal Government liability in a number of ways. (Sec. 605)

- The bill allows EPA to use the Fund to reimburse PRPs up to fifty percent of the costs incurred due to the failure of an innovative technology. EPA has testified that the liability system is a major disincentive for the use of innovative technologies. This provides only a discretionary, partial response. But no new funding is provided for it, so EPA will continue to have its current incentive to get PRPs to pay all such costs (to avoid reducing current Trust Fund money for cleanup). (Sec. 604)
- It defines government response costs to include attorney's fees, expert witness fees, and oversight costs. (Sec. 605)
- It defines MSW to include toxic wastes generated by small quantity generators (less than 220 lb. per month). This provides both a retroactive <u>and</u> prospective exemption and/or cap on liability. (Sec. 605)

Title VII - Funding

In order to properly refocus the Superfund program on public health, environmental protection and other important priorities, adequate funding must be raised in a reliable and efficient way. It is not enough to propose new programs and pay homage to new priorities, yet the Administration's bill does just that.

- It authorizes some demonstration projects and a few other environmental justice, public health and community participation initiatives that are useful, but it does not fund them or the authorized increases. CIAOs are authorized at \$50 million per year, and increased technical assistance grants (TAGs) are authorized at \$60 million per year. (Sec. 706)
- Partial payment by the government of additional remedial action required by a failed innovative remedy is authorized at \$40 million per year. (Sec. 706)
- No increased funding is provided for any of the above.
- There is no increased funding provided to clean up sites where there are no solvent, deep pocket PRPs (orphan sites). Current funding for these sites is already insufficient. Any funding for the new priorities created in this bill or for the orphan share fund will likely aggravate funding problems at orphan sites.
- The only truly new funding is an insurance tax to finance a proposed Environmental Insurance Resolution Fund (EIRF), which would reduce the expenses (past and future) of solvent PRPs and pay the EIRF's high overhead costs (see Title VIII critique).
- An orphan share fund capped at \$300 million would be set aside from existing revenues. This money Superfund's only mandatory appropriation would be used to reduce the liability of viable PRPs by relieving them of their present

responsibility to pay for orphan shares. There are two major problems with this provision (also see critique of Title IV - Liability - Orphan Share Fund):

- 1) The Senate Appropriations Committee has made it quite clear to the bill's proponents that they will not allow or provide a "mandatory appropriation" for this purpose. Their position is that money for orphan shares will be subject to the annual appropriations process. It will be in one pot with all other Superfund money, and with all other claims from that Appropriation Subcommittee's jurisdiction (e.g. NASA, VA).
- 2) Administration and chemical industry representatives have said Superfund Environmental Income Tax revenue previously used for other budget purposes could be allocated in the future to the new orphan share fund. But there are clear indications that other claimants in the Administration are pursuing these "excess" funds from the Superfund EIT tax scoring "find" to pay for GATT or the welfare program, among other budget items.
- Neither the EIRF nor the orphan share fund expands cleanup funding, but instead shifts money from one group to another.

Further, the bill requires but does not specify a price tag for major new transaction cost expenditures by the Government, including:

- Full PRP searches.
- Expedited de minimis settlements by the government at every site.
- Pursuit of all non-settling PRPs by the government.
- Financing the shares of recalcitrant parties while they are being pursued.

ASAP fully supports increased spending in many of the areas identified by the Administration, and we support replacing site-specific PRP liability, but we believe it is vital to be honest about how the proposed programs will be funded. The only way to truly fund the proposed programs and processes -- short of increasing general revenues -- is to increase the size of the Trust Fund with broad-based business taxes as ASAP proposes.

Title VIII - The EIRF

The basic flaw of the Environmental Insurance Resolution Fund (EIRF) proposal is that it takes a discrete and derivative liability dispute — the one between PRPs and insurers — and attempts to resolve it in isolation from all other liability-related issues. EIRF is not designed to eliminate the underlying cause of the Superfund liability warfare which causes suits against insurers in the first place. Rather, it seeks only to eliminate one of the symptoms. ASAP's concerns include:

- The EIRF provides no additional money for public health and cleanup. The
 hundreds of millions of dollars in new taxes on insurers to fund the EIRF will be
 used only to reduce the existing liability and past expenses of solvent PRPs. Worse,
 the new tax revenue will pay for past PRP costs, including PRP legal fees dating back
 to 1981.
- Yet the fund is virtually unlimited. It can borrow against future revenues, and it
 has a perpetual life until it has spent all amounts it owes for any PRP's claim for the
 costs of disposal before January 1, 1986 at any current or future NPL site, if the site
 was noticed before 10 years after passage. (Sec. 803)
- The EIRF may well provide incentives for more disputes. Whether or not they settle with EPA on remedies to clean up sites, or with other PRPs and EPA on cost allocation, PRPs will have an average of 40% of their future legal bills paid by EIRF within 60 days of submission to the Fund. This subsidy of PRP legal fees will fuel the PRP side of the battles between the government and PRPs at sites. (Sec. 806)
- The transaction cost savings due to EIRF are vastly overstated. A recent RAND report on transaction costs found that only 1% of PRP costs were for disputes with their insurers (a tiny fraction of the 35% PRPs spend on overall transaction costs).
- Insurers' transaction costs are much higher than PRPs'. However, 60-70% of insurers' toxic waste costs are due to non-NPL sites, which are usually mixed in with NPL sites in PRP suits against insurers. In these common cases, resolving NPL liability will not stop the lawsuits.
- By requiring proof of policy terms (even if the policies can't be found), and limiting recovery by any deductibles in them, the EIRF will create a new federal claims bureaucracy to deal with factual arguments over policies stretching back decades, and spawn a subculture of lawyers and lobbyists to address each substantial claim. (Sec. 806)
- To receive EIRF money, small businesses must produce their insurance policies from more than 10 years ago, or establish the essential terms of these policies by some other means. Where will small business find the proof of coverage, deductibles, and the other factors required by EIRF from these old policies? (Sec. 806)
- The "trigger" to activate the EIRF contains enormous loopholes that allow PRPs to forum shop (EIRF or litigation) for the best deal.

As drafted, if 15% of the "eligible persons" (PRPs who have filed suit against their insurers) expressly elect not to participate in the EIRF, the whole system is dismantled. (If between 80 and 85 percent elect to participate, the EIRF board will make the final determination as to the fund's status.) However, if less than 15%

elect not participate, it does not ensure that the remaining 85+% will participate and not file suit against their insurers.

Only those eligible parties who expressly accept the determination of applicable percentages are bound to participate in the EIRF.

Those who do not file a request or who file but do not respond are deemed to have accepted the percentages offer, but only for purposes of determining if the minimum participation level has been met. They are not bound to settle with the EIRF. Furthermore, parties who have not yet filed suit against their insurer are not bound. These categories of eligible parties can choose either to file suit or to pursue settlement through the EIRF, depending upon which works best to their advantage. (Sec. 806)

- Interest on several billion dollars in past PRP legal fees and cleanup costs would begin to accrue for all sites in litigation or arbitration as soon as a PRP accepted the EIRF's offer. This would add several hundred millions of dollars a year to be raised for the fund.
- Contrary to the impression some have, a majority of the property and casualty insurance industry (by premium volume) opposes the EIRF.
- The funding of EIRF is highly controversial. Most PRPs and many insurers want the tax to be based on the market share of property casualty insurers during the periods when the policies being settled by EIRF were written (i.e. "retrospective tax"). PRPs say a prospective tax will simply be passed along to all businesses because it will fall equally on all insurers. These insurers say the only fair way to assess money for a settlement fund is to relate it to liability and exposure not current market share.

The insurance companies which negotiated EIRF insist that the tax should be assessed based on current and future premium income share (i.e. "prospective tax"), or they say they will be significantly harmed.

III. CONCLUSION

This Committee knows well the failures of Superfund. You and others have documented the unconscionably inadequate cleanup record, the staggering waste of public and private resources on legal and liability battles, the disenfranchisement of citizens which erodes confidence in government at all levels, and the suppression of economic dreams as entire communities wait, and wait, and wait for action.

Let us not settle for reform which falls well short of addressing these problems. Enactment of a bill is not what should drive us. Instead, we should only settle for a bill that truly gets the job done. We would prefer no bill at all to one which perpetuates in the name of reform many of the injustices and failures in place today.

Let us not mistake cobbling together a bill which satisfies some vocal and visible constituencies for a bill which will result in a successful program. Such a bill may be politically feasible, but if it doesn't work, it's not much help to anyone.

ASAP believes this Administration and this Committee want a successful Superfund program. There is still time this year to craft a bill that truly serves the interests of all Superfund stakeholders. We are encouraged that you are holding this hearing. We welcome open, frank and honest debate on all the issues surrounding the Superfund program, and it is our sincere hope that the Committee will take the time to examine the Eight Point Plan and other proposals which offer a positive alternative to the status quo embodied in the Administration's bill.

Thank you. We look forward to working with you.

The Eight Point Plan Legislative Summary

Title I. Public health must be the focus.

ASAP proposes changing Superfund's focus from battles over who will pay to a new focus on public health. The public health process and staffing would begin when a site is first proposed for the NPL and would not end until the site is delisted.

- In every state, a federal or state official of appropriate experience and training would be appointed Public Health Coordinator (PHC). Emphasis would be placed on ATSDR contracting with state and local public health organizations for this purpose.
- In general, the PHC's staff would direct and oversee expanded community-based public health activities related to site listing and cleanup, with technical assistance from the Agency for Toxic Substances and Disease Registry (ATSDR)
- PHC staff would be responsible for determining whether or not public health is threatened
 by a site, and, if so, for working with other officials to eliminate or mitigate the risk. PHCs
 would help lead the process of prioritization of removal and remedial action at the various
 sites, as described in Title III of the Eight Point Plan.
- Comprehensive chemical screenings and an analysis of exposure pathways will be the
 principal criteria for listing a site and prioritizing cleanup spending. The number of health
 assessments would be expanded and speeded up.
- Health assessments should be based on testing and data deemed necessary by the PHC and ATSDR or its contractor (not merely derived from pre-existing data prepared by EPA).
 They should examine all possible sources of exposure to and health effects from toxic substances.
- Recognizing that a hazardous waste site may not be the only cause of harm or may be the least among many causes of harm, the PHC will have an affirmative responsibility to work with government officials responsible for regulating pollution through other media. Together, they would produce a report detailing all sources and pathways believed to be responsible for exposing community members to significant quantities of toxic chemicals that may create health impacts. This report will be submitted to EPA and the interagency committee established in Title VIII under this plan.
- The report also should recommend any environmental regulatory measures outside the scope
 of Superfund which might significantly reduce harmful health effects on the community.
- The PHC, supported by ATSDR, will routinely issue Environmental Health Response Briefings to medical providers and Community Working Groups where sites have been designated for health investigation or where an assessment warrants further consideration.

Title II. Adequate funding must be provided.

ASAP's plan would increase funding for site cleanup, as well as related priorities such as public participation, public health, remediation skills training programs, community recovery initiatives and natural resources restoration.

- An annual program budget of \$3.65 billion would be set. This is a substantial increase over
 current cleanup spending. It would include both "on" and "off" budget costs for all public
 and private expenditures due to cleanup and natural resources activities at NPL sites
 (including PRP payments at single and multi-party sites). A ten-year authorization would be
 made.
- Broad-based business taxes and special assessments would replace site-specific liability fundraising for lawful pre-1987 disposal at multi-party NPL sites (both current and future listings).
- Annual private sector funding would be as follows: large business (2 times current Environmental Income Tax rate, i.e. increase of \$700 million); small business (fees of \$100 million); oil and chemical taxes (current law), additional fees on insurers (\$300 million).
- The federal government's contribution would rise moderately to \$300 million per year in exchange for release from liability at non-federal facility sites.
- States would pay a flat matching share of 10-15% of all costs, including grants to the state
 itself.
- All taxes and fees collected would be committed to a permanent, indefinite, mandatory
 appropriation to the Superfund program.

Title III. Site prioritization must be based on public health risks.

ASAP proposes that both the listing of sites and the expenditure of funds be governed by a new hazard ranking and prioritization system that considers not only the risks presented by the toxic waste site in question, but also the health effects it may have in conjunction with other environmental risks in the area (such as other dump sites, industrial facilities and abandoned plants).

- The hazard ranking system (HRS) would rely more on real risk and real exposure pathways, and consider the impact on human health of the socio-economic condition of affected communities.
- All aspects of the ranking process would be open to the public, including finding of facts, setting of criteria and calculations.
- A formal process of prioritization, with strong public involvement, would be established at the state and national levels, both for cleanup and natural resources restoration spending.
- A state or representative citizen group could petition to have a site re-scored if it is not already being cleaned voluntarily or under a state program.

Title IV. Remedies must be effective.

ASAP's proposed reforms would ensure appropriate remedies. The reforms would focus on getting the right people and right incentives into the decision making process at each site, rather than dictating to them what the answers should be according to an inflexible national standard.

- Remedies would be chosen on a site-specific basis, in a process involving the affected
 community, environmental health and engineering professionals, relevant government
 authorities and entities which have knowledge of disposal at the site. (See community
 involvement provisions in Title VI.)
- Remedy selections will be based on national human health exposure standards and consider the most cost effective method of achieving this standard, taking into account probable future use and available technology.
- Significant weight will be given to local decisions on future land use and to local recommendations for remedies.

Title V. The litigious liability financing system must be replaced.

ASAP proposes to replace the site-by-site liability financing system for legal, pre-1987 waste disposal at multi-party NPL sites with an expanded trust fund supported primarily by broad-based business taxes. This would allow Superfund to focus on cleanup, not on litigation and fundraising.

- Superfund's current liability system would be maintained for single-party sites and for waste disposed after Dec. 31, 1986.
- No party would be relieved of liability for any waste it disposed illegally.
- Small businesses, individuals, non-profit organizations and small local governments would be
 entirely exempt from liability, unless they broke disposal laws, or were/are a site owner.
- The plan does not make any change in a person's right to seek compensation for harm from pollution ("toxic torts").
- Big PRPs would continue to manage the cleanup process and would be reimbursed for the
 cost of pre-1987 disposal cleanup. PRPs who reject a site remediation management offer will
 remain liable under the current system.
- Parties receiving exemptions or reimbursements would have to agree not to sue any other such parties or their insurers over amounts expended after January 1, 1990. Those amounts would be reimbursed from the Fund.
- EPA would delegate management of and provide funds for cleanup to qualified states which
 request it. States would have to develop a hazard ranking system consistent with Title III.
- Government would have authority to place a lien on all land cleaned up with trust fund money to ensure there is no unjust enrichment.

- An optional new fund of \$500 million would be created to expand the ability of states to
 clean up priority state sites, if the basic principles of the Eight Point Plan were used at those
 sites. Public health and environmental priorities, community participation, and
 liability/financing changes would apply as in the reformed federal program. This would be
 subject to a state match.
- To encourage voluntary cleanups, particularly to redevelop urban areas, EPA and the Fund
 would make grants to states for the development of innovative, state-managed programs to
 remediate sites of lower public health and environmental risk.

Title VI. The public must be an active, empowered participant in the process.

ASAP proposes to bring community leaders into Superfund decision making at the beginning and throughout the process, and also to provide opportunities for minority job training in environmental remediation.

- At every listed site, public meetings and consultation with community leaders would be required before each major decision. The consultation requirements would be judicially enforceable.
- A community working group (CWG) would be formed at each NPL site within three months
 of listing. CWG members would be appointed by the governor and fairly represent the
 affected community. Resources would be made available to give them the expertise to fully
 participate.
- Technical assistance grants (TAGs) to community leaders would be made available earlier in the process and have easier application and accounting procedures. The current \$50,000 cap on grants would be eliminated.
- The Fund would finance grants to local educational institutions, especially in high toxic waste impact areas, for training minority and underprivileged individuals in environmental remediation.

Title VII. Tough liability must be maintained prospectively.

ASAP's plan would ensure that prospective Superfund liability remains a strong incentive for proper waste management and disposal, while clarifying the law to protect buyers and lenders. Liability for disposal after Dec. 31, 1986, would not be changed from current law except as follows:

- Liability would be eliminated for prospective "innocent" purchasers of contaminated property
 who conduct an appropriate environmental audit, cooperate with responsible agencies, fully
 report their knowledge of contamination, provide access for remediation, and do not
 contribute to the contamination.
- Lender and trustee liability would be eliminated unless they contributed to the contamination.

Title VIII. Communities harmed by toxic disposal must be helped to recover.

ASAP's plan would focus the resources of other, existing federal programs on areas of high negative environmental impact so that these communities can recover from the economic and social costs due in part to toxic contamination. A small amount of Superfund money would be used for this coordination function.

- To do this, the Department of Housing and Urban Development (HUD) would chair an
 interagency committee to include at least the Departments of Health and Human Services
 (HHS), Commerce, EPA, Education, Labor and Agriculture.
- This committee would identify appropriate programs and, in conjunction with state and local
 governments, establish action plans for revitalizing priority, high impact communities. This
 would be done in close consultation with community leaders and the private sector.
- The Fund could finance planning grants for such work.
- Government contracts at all sites receiving Fund money would encourage the participation
 of minority businesses and the training of minorities in remediation skills. EPA would be
 required to institute a Small Disadvantaged Business program similar to that of the Defense
 Department.
- Government contractors at sites would be given incentives to create subcontracts and joint ventures with minority businesses, with the intent of helping them to expand their capabilities.

MYTHS ABOUT THE EIGHT POINT PLAN

One of the strangest parts about this Superfund debate is listening to the relentless attacks on our plan, and particularly on our proposed retroactive liability reform. These seem to take on the cloak of deliberate disinformation. I find it personally appalling when we are first told that our approach is "off the table," and cannot be discussed. As we press our concerns, the defenders of the current system assert that ASAP's proposal would <u>slow</u> cleanup and cost <u>more</u>. This is false. Let me take a few minutes to highlight some of the more prevalent myths.

Myth: The Administration considered and rejected abolishing retroactive liability.

Reality: Not true. From Administrator Browner's first Hill testimony in 1993 (announcing that EPA was open to any change in Superfund, except site specific liability financing), through the NACEPT and Inter-Agency processes last summer and fall, through their reactions to the Treasury Department's proposal to reform liability, and into White House-led meetings last winter, EPA and the Department of Justice adamantly refused to seriously discuss, much less study, fundamentally changing the liability system.

Myth: Congress will not pass, and the American taxpayer will not accept, new taxes to support the Superfund program.

Reality: There is no proposal I know of, including ours, that even hints at shifting the cost burden from business to individual taxpayers. ASAP, The Business Roundtable, the Smith-Zeliff bill, and other similar proposals, all suggest increased business taxes as the predominant source of funding — as they are today. These proposals are seeking stop wasting money on lawyers and to redirect this spending to cleanup.

Furthermore, as noted earlier in my discussion of Point 2 of the Eight Point Plan, large parts of the business community are actively lobbying to replace the current financing system with taxes. There is no secret to this widespread business support for liability reform. The current system hurts them. They are therefore offering more money to address the cleanup concerns of affected communities if they can be relieved of the uncertainty and huge legal fees that the present system imposes on them. It seems to me inconceivable that Congress would not respond to taxpayers who are asking to be taxed and to a plan that promises more and faster cleanup of our communities.

Myth: Our trust fund approach would produce the largest public works program in American history.

Reality: This goes beyond exaggeration. We are proposing a \$3.6-\$4.6 billion annual Superfund program, with total public funding of \$3-4 billion. That does not approach the size of the federal highway program, which has an annual budget of \$20 billion -- not to mention the airport or water programs, or even the effort which will be necessary to clean Department of Energy sites.

No one is suggesting that Superfund be made a "taxpayer financed cleanup program," which implies taxes on individuals. ASAP, The Business Roundtable, and other groups all suggest increased business taxes as the predominant source of new funding -- as they are today.

Myth: A trust fund approach betrays the "polluters pay" concept.

Reality: The NAACP and ASAP care about protecting public health, not "concepts." This "concept" has governed Superfund for 13 years and has failed our citizens. In the real world, this "concept" delays site cleanup and benefits lawyers, not citizens. Under ASAP's plan, companies which broke the law will remain liable; the plan would not benefit them in any way. Companies which pollute in the future also will remain liable and pay the full costs of cleanup.

So, I ask, how are we betraying the "polluters pay" concept? We continue to hold the feet of lawbreakers and wrongdoers to the fire.

Most of the die hard defenders of the continued application of this failed "concept" to old disposal do not live, nor do they have members who live, near Superfund sites.

Myth: Retroactive liability is an incentive for careful waste management.

Reality: Retroactive liability for past legal waste disposal has nothing to do with incentives for careful waste management today. Current and future liability does, and that would not change under our proposal. It is important to distinguish between the two.

Unlike the Administration bill which provides protection against liability for current and future disposal for municipalities, small quantity toxic waste generators, and MSW disposal companies, large and small, we do not weaken future liability for any party for toxic pollution.

Myth: Abolition of retroactive liability would transform the program from one in which 70% of response work is performed by PRPs to one in which 70% is performed by EPA.

Reality: Under today's law and all reform proposals Government makes all the important decisions which really determine the costs of cleanup. EPA clearly believes who implements those decisions is more important than whether the work is done. ASAP disagrees. Far too little cleanup is occurring today largely because the current site-specific, litigation-based, adversarial financing system delays cleanup. ASAP's proposal would replace that system with a mechanism that would put business money to work on cleanup, not fighting over who pays and how much.

Much is made of EPA's "Enforcement First" policy (e.g. 70% of cleanup work is now paid by PRPs). PRPs now seem to be paying about half of the costs of the overall Superfund program (\$1.5 billion in annual PRP settlements versus \$1.4-1.5 billion in Superfund appropriations). However, EPA's own data indicate that the speed of cleanup has not accelerated due to this policy.

Under ASAP's plan, the government can continue to use its enforcement authority to require PRPs at a site to manage the cleanup. Therefore, the efficiencies of private sector management will remain and the claim that elimination of retroactive liability will result in EPA performing 70% of the work is entirely incorrect. We are also seriously exploring delegating the program to qualified states, which should create additional efficiencies.

Myth: Abolishing retroactive liability would require \$3 to \$4 billion in new taxes.

Reality: No liability proposal we have ever seen, including ASAP's Eight Point Plan, proposes to raise "\$3 to \$4 billion a year in new tax revenues." The detailed plan offered by ASAP would require "new tax revenues" from business of \$1.2 to \$1.8 billion -- while providing large increases in current cleanup spending.

Myth: Cleanups would be significantly more expensive under a trust fund approach.

Reality: The implication here is that we have an efficient system today. But there is precious little ability today for PRPs to control costs when EPA makes all the key decisions. And under today's system, EPA has no incentive to control any costs (either its own or the cost of remedies it imposes on private parties), since "PRPs will pay."

The fact is that cleanups would be <u>more</u> efficient under ASAP's proposal than they are today. Qualified states and/or public-private entities would be

delegated much of the cleanup work, and PRPs could still be ordered to manage cleanup as they do today. With a set budget Superfund decision makers would have an incentive to be as efficient as possible.

Myth: Some industries, which have their own cleanup corporations, will no doubt be contracted to do cleanups. Therefore, industries will now be paid to clean up their own mess.

Reality: This point is completely backwards. The problem is that under the current system EPA must negotiate on every clean up decision with the same businesses which are paying for cleanup. Decisions which affect citizens' lives are made in negotiations behind closed doors between EPA and corporations, which have a primary incentive to save themselves money. Our plan would end this practice and have the Government make cleanup decisions, in consultation with the affected community, based on public health risk — not the checkbooks of private parties.

Myth: Poor and minority communities will continue to be by-passed because of an inadequate hazard ranking system.

Reality: Unlike the Administration bill which mostly studies environmental justice concerns and does not change the current system under which people of color communities have been short changed, our plan establishes a hazard ranking system that considers not only the actual risks presented by the toxic waste site alone, but also the health effects it may have in conjunction with other environmental risks in the area. Our plan would prioritize sites <u>and</u> spending for cleanup on the basis of public health risks. Once listed, sites would receive money on the basis of the threat they pose to public health. This is unique -- no other plan prioritizes cleanup spending on the basis of public health risk.

There is not one sentence in the Administration bill which changes anything about how cleanup resource priorities are made. ASAP's plan says how to change priorities, <u>and</u> provides the funding to get the job done.

Myth: Elimination of retroactive liability would remove any incentive for voluntary cleanups for sites covered by the public fund. Tens of thousands of voluntary cleanups occur now.

Reality: There is <u>no evidence</u> to support the claim that "tens of thousands of voluntary cleanups occur now." EPA, Resources For the Future (RFF) and others have tried to quantify the number of voluntary cleanups and have failed. Based on a tiny sample of 6 sites of Fortune 20 companies, using an expansive definition of "voluntary," and not seeking to ascribe a motivation such as fear of retroactive liability, RAND estimated that only 8-10% of non-NPL sites were being cleaned up "voluntarily" -- an estimate that would yield a much smaller number than the extraordinary claim above. Certainly many occur, but there is no evidence that

retroactive CERCLA liability is the sole or even the primary cause. EPA's own report on "Indirect Benefits of Superfund" acknowledges that a variety of factors in addition to CERCLA liability contribute to any voluntary cleanups.

Moreover, ASAP's proposal focuses on multi-party NPL sites. There is no evidence that any multi-party NPL site has ever been voluntarily cleaned up, a fact noted in Superfund studies published by both EPA and RFF.

There is good reason for this: the current liability system often prevents voluntary cleanups. Significantly, the Administration recognizes this, and proposes in its bill to remove retroactive liability for prospective purchasers of contaminated property.

Myth: Abolition of retroactive liability would generate a new round of litigation over who sent how much waste, and when, to each site.

Reality: EPA agrees that PRPs today fight with each other, EPA and their insurers over who sent how much waste, and when, to each site. These are extremely complicated factual issues, and they are the major source of Superfund disputes and transaction costs. To these questions, for every one of tens of thousands of PRPs, the Administration's bill will add a series of other highly complicated issues (as part of the "Gore Factors" required to be used in allocation decisions): how much control over disposal did parties have? what degree of care in disposal did they use? how cooperative have they been with the Government? Determining this information will add to existing transaction costs, and make a mockery of the goal of completing allocation within 18 months.

ASAP's proposal makes all these disputes moot at 80% of NPL sites -those which a survey of EPA managers indicates had stopped accepting waste by
the end of 1986. At the remaining 20% of sites there would be <u>one</u> remaining
issue -- how much waste was disposed of after 1986? This would be relatively
easy to settle, because there are much better records for disposal occurring after
1986.

Obviously this one issue, affecting a minority of parties at only 20% of the sites, could not possibly create more litigation than the current legal maelstrom, much less after the Administration bill complicates it with new factual issues to be disputed.

Myth: Abolition of retroactive liability would be unfair and would result in a windfall for parties who had not cooperated in cleaning up sites.

Reality: No business group or entity is seriously making this argument. Like citizens who live near Superfund sites, business knows that relatively few sites have been cleaned up. The lion's share of the cleanup bill has yet to be spent and could well exceed a hundred billion dollars.

Myth: Abolition of retroactive liability would remove incentives for private sector investment in innovative technology research.

Reality: This recent claim flatly contradicts EPA's prior position, and the experience of everyone else concerned about this issue. Last spring, EPA testified before Congress that "fear of liability ... slows down the adoption and subsequent commercialization of innovative treatment technologies." At the same time, EPA admitted that, "a fundamental tension exists between having PRPs pay for cleanups and conducting a program focused on developing new technology."

Myth: Removing retroactive liability will result in truly "orphan" sites competing with sites that have existing PRPs for a small pool of money.

Reality: Our critics are not reading the numbers. Our plan would spend hundreds of millions of dollars <u>more</u> on cleanup than is currently being spent by EPA and PRPs <u>combined</u> at all sites, orphan or otherwise. More cleanup money will produce more and faster cleanups, and will provide funding for more cleanup of truly "orphan" sites.

Under the current system, cleanup has not begun at hundreds of orphan sites and sites where EPA and PRPs get bogged down in conflict. The continuing harm to the health of people living near these sites is a national disgrace and an environmental injustice. Only the Eight Point Plan would clean these sites quickly and without punishing innocent communities for the fact that no solvent parties can be found at a local site.

Myth: Many of the efficiencies in the current Superfund program derive from PRPs performing response action with the diligence that comes when that PRP is required to pay the costs of any inefficiencies.

Reality: The implication here is that we have an efficient Superfund program today. Far from it. We have a cleanup program that has spawned much more legal warfare than cleanup. We have a program in which all key decisions (and many minor ones) are made by government officials with little incentive to find the most efficient way to get the job done. We have an atmosphere in which PRP money is considered a "free good."

Myth: Most estimates are that private parties spend approximately 40% less for remediation than the government for comparable projects.

Reality: This statement is simply wrong. We know of no source for this statistic. If it is even partially true, EPA should be stripped of its contract management responsibilities entirely and these should be given to qualified states and other agencies (as ASAP suggests). But what is the point? Under ASAP's plan, private

parties would continue to manage most remediation work, as they do today. The difference is that under our plan the parties would cease fighting over financing.

Myth: If liability for old waste disposal is eliminated, few PRPs will retain sufficient liability at individual sites to want to oversee and ensure cost-effective cleanup.

Reality: Opponents of retroactive liability reform can't have it both ways. We do not have cost effective cleanup today. The litigation mentality of Superfund, and distrust of PRPs, builds in layers of transaction costs, defensive overtesting and duplicative review by PRP, EPA and state officials and contractors. The fact that cleanup is viewed as a "free good" also fuels community and other pressures for more expensive, but not necessarily better, remedies, even though these pressures may result in no cleanup, or significantly delayed cleanup. In short, the so-called "incentives" for PRPs to ensure cost-effective cleanup actually are enormous "disincentives" for rapid, efficient cleanup.

Myth: Identifying which wastes were disposed before and after 1980 will be easy only for sites closed by that year.

Reality: It's true that a 1980 cutoff date would not lower transaction costs as much as the 1986 date suggested by ASAP, but it still would remove fully half of the NPL sites from the liability fundraising system. A year-end 1986 date would remove 80% of the sites (based on a survey of EPA managers) and virtually all of the sites where rational cost allocation has proven impossible. At most of the remaining 20% of the sites, the only remaining issue would be how much waste was disposed of after 1986. This would be relatively easy to settle, because there are much better records of post-1986 waste disposal due to changes in RCRA's record-keeping requirements that year.

Myth: The exclusion from the trust fund for willful polluters invites litigation concerning what was "contrary to a law at the time of the actions."

Reality: Our test is not "willful" but "illegal." Resources for the Future, using EPA survey data, turned up evidence of illegal disposal by any party at fewer than 15% of all Superfund sites (excluding those owned by the federal government). Therefore, this would not be an issue at most NPL sites. At sites where it is an issue, we believe there should be retroactive liability for parties which broke the law.

Myth: Virtually every site subject to a federal, state or local inspection requirement will have some violation cited during its period of operation. Waste generators and transporters had no comparable regulatory review. The net effect is to subject most site owners and operators to the old system, and waste generators and transporters to the new system.

Reality: Site owners and operators usually controlled disposal activities. Those who broke the law should not be relieved of liability.

Myth: Estimating the amount of tax necessary to account for liability for pre-1980 waste will not be easy.... Moreover, forecasting future expenditures at NPL sites is speculative.

Reality: Society needs to decide what it needs to spend and is willing to spend to clean up our environment, and budget for that amount. ASAP has offered detailed budget justifications based on academic studies which provide sufficient amounts over the long term and represent substantial increases over what is being spent on cleanup today. Are the critics suggesting there be no budget for Superfund -- unlike almost every other Government program we have?

Myth: If the corporate tax pays for liability for pre-1980 waste handling at NPL sites, voluntary cleanup at sites with significant pre-1980 activity will be impeded.

Reality: This is one of the great Superfund myths. There is no evidence that any multi-party NPL site has ever been voluntarily cleaned up. And no evidence that serious state sites are any different. On the contrary, fear of Superfund liability acts as an impediment to voluntary cleanup and redevelopment at urban and industrial sites which are not on the NPL. The Administration implicitly acknowledged Superfund liability's contribution to this "greenfields/brownfields" problem when it wrote the laudable but inadequate prospective purchaser liability exemption into its bill.

ASAP

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H.R. 3800, THE SUPERFUND REFORM ACT OF 1994, AND ISSUES RELATED TO REAUTHOR-IZATION OF THE FEDERAL SUPERFUND PROGRAM

THURSDAY, JULY 14, 1994

House of Representatives, Subcommittee on Water Resources and Environment,

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,

Washington, DC.

The subcommittee met, pursuant to call, at 9:37 a.m., in Room 2167, Rayburn House Office Building, Hon. Douglas Applegate (chairman of the subcommittee) presiding.

Mr. APPLEGATE. I think everybody is in the room that needs to be in the room, or there is a few others coming in, but anyway, we

want to get our meeting going.

So I want to welcome you to the final hearing of the Superfund reauthorization. The first panel is composed of persons who strongly support provisions of H.R. 3800, the Superfund Reform Act. The second panel will discuss the findings of the New Hampshire Superfund Task Force. Our final panel will discuss potential health effects at Superfund sites.

Ladies and gentlemen, the Superfund is broken and it is not working, and it definitely needs to be fixed. I don't mean that we should wait for another 2 years to do it, but I think it is something

that we need to do now. We cannot maintain the status quo.

The question is do we have the pleasure of time? No, we don't. And we certainly want to take a look and see where we can make corrections where the lawyers are not going to get richer and the sites remain dirty, and where more time is going to be spent arguing about who is to blame than in getting rid of the problem.

Now, this is what has been going on over the years, where site remediations take far, far too long to complete and the result is inconsistent levels of cleanup when it is done. I don't think that we want to see a continuance of where cleanups could actually take longer as the program authorizations lapse. Now isn't the time to look for perfection. We certainly are not going to find the perfect bill. We will never agree on that.

In fact, significant and inconsistent changes will only lead to the death of the Superfund reauthorization in this Congress. And interested parties must ask themselves whether or not the Superfund reforms contained in H.R. 3800 represent an improvement in cur-

rent law.

Some will say yes, some will say not necessarily. But in my estimation, it must pass. And if necessary, with very limited changes. Not major changes. We don't know that now, because we have to sit down after we take all of the information that we have, after we hear our final panels, and then we will try to put it together and construct what we feel and we hope that you will feel will be a piece of legislation that we can all be proud of.

So I want to thank the panelists for coming, and I look forward to a very good hearing. And at this moment, I would like to turn to the Ranking Minority Member of this subcommittee, Sherwood

Boehlert, for anything that he wishes to say. Mr. BOEHLERT. Thank you, Mr. Chairman.

I want to begin this morning's hearing by thanking, excuse me, thanking you for your shared dedication to passing a comprehensive Superfund reform package before the close of this Congress. Representatives of industry and the environmental community are supportive of our efforts to change the way in which the Superfund program is run. I am confident that we can successfully respond to this mandate for change.

The panel now seated before this subcommittee is one that I am personally very proud to see assembled. As a person who has preached for years about the compatibility of sensible environmental protection and a strong economy, I am heartened to see the CEO of CIBA Geigy and the Legislative Director for the Environmental Defense Fund on the same panel with the same message. This is exactly the type of coalition and the level of cooperation that future environmental legislation should be based on.

Though H.R. 3800 may not reflect the preferences of all who worked on its development, it does represent a productive effort to bring about long overdue reform to the Superfund program. The spirit of compromise which has characterized the drafting of H.R.

3800 is a tribute to all who have been involved.

The goal of this subcommittee is to gain a more thorough understanding of the Superfund package now before us, and to make those improvements which are necessary to bring about a more efficient, equitable and economic cleanup of our Nation's hazardous waste sites.

During the Superfund hearings conducted earlier this week, witnesses testified on behalf of ASAP, suggesting that H.R. 3800 does not serve the interest of American small business. As I read the

legislation, I reach a different conclusion.

I hope that today's hearing will serve to further flesh out the benefits and be realistic in assessing the cost to American business that would result from implementing H.R. 3800. The uncertainty that surrounds the current Superfund program saps the strength of our economy, each and every day that we delay reform. American industry and the American people deserve a Superfund program that can be looked to with certainty as to its scope and requirements.

I look forward to hearing from the diverse interests represented on the three panels appearing this morning. But I am especially pleased to see the citizens panel from New Hampshire here, and

before anything else, I just want to commend them.

I know the compensation is the satisfaction of a job well done. So particular thanks to you. That is what makes America great, people working hard, voluntary, to make policy in such a way that it will be responsive to the needs of the American people.

And to the panel before us, I say right on, thank you very, very

much for your outstanding work.

Mr. APPLEGATE. Thank you very much, Mr. Boehlert. Very good

statement.

We will go to the panel and ask if anyone has any statements that they would like to make.

Mr. Geren.

Mr. GEREN. I don't have an opening statement.

I just thank the panel, and, Mr. Chairman, I particularly want to thank you for these very thorough hearings that you have put together. It has been a major contribution to the process and appreciate your doing it.

Thanks, Mr. Chairman. Mr. APPLEGATE. Thank you.

Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, I also want to take the opportunity to congratulate you, commend you for your leadership on this whole issue, and for pushing these hearings so aggressively, recognizing the urgency of the task before us and the importance of doing something meaningful this Congress on the Superfund

issue. I look forward to hearing the panelists speak.

I want to also commend our Ranking Member, Mr. Boehlert, as well as Mr. Zeliff for the leadership he has provided. And I think it is important that while we do something, that we ensure that what we do is the correct kind of actions. Personally, I think the issues of retroactivity, retroactive liability, joint and several liability, are something that needs to be addressed as we go forward with the Superfund legislation.

But thank you, panelists, for the time you have taken and the commitment that you have shown to the issue. And I look forward

to hearing your comments.

Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Hutchinson.

Mr. Zeliff.

Mr. ZELIFF. Thank you, Mr. Chairman.

I want to also express my appreciation to you for your leadership, for your willingness to hold these very important hearings on the Superfund program.

As you know, I have had a really strong interest in the program and look forward to the hearings that you are doing not only on Tuesday, but today and any others that are coming up later on.

I have been involved with Superfund since I was first elected in 1990. Soon after being elected I learned I had 14 National Priorities List sites in my district. I guess we are the fourth highest density in my country, so I began to start walking each of these sites.

After walking just a few of them, it became very clear to me that this program was not working. Small towns are putting off building new schools or hiring new teachers and small business couldn't find the capital to expand and create jobs. Based on an average of \$30

million per site, the economic effect on our New Hampshire econ-

omy has been devastating.

I assembled a task force of about 35 members to study these programs. We came up with some suggestions as to how to get the Superfund program back on track. Three members of that task force make up today's second panel. I am very proud of them and their willingness to put so much time and effort into the solution of Superfund. They will be able to speak to the many difficult and frustrating problems that we have had with Superfund in New Hampshire, and they can do it from an experienced bases and hands-on bases which will be very valuable.

We came up with a series of recommendations which I then turned into H.R. 4161, the Comprehensive Superfund Improvement Act. I asked Senator Smith to introduce a companion bill in the

Senate, which he did, S. 1994.

While my bill gets into many different areas, the most important part of the bill addresses liability. Specifically, the elimination of retroactive liability and the replacement of joint and several with a binding fair share allocation system. Retroactive liability permeates every aspect of the Superfund, from driving cost recoveries in litigation to remedial and cleanup decisions. It is unfair, it is un-American, to hold people responsible for actions which were completely legal at the time.

I urge Members to look at our proposal carefully. I urge them to listen to the testimony. Even more so, I urge them to go to Superfund sites in their districts and ask the people involved at those sites what they think needs to be done to fix Superfund.

I can almost guarantee you will hear a different story than you hear most often here in Washington. The bottom line is to get the money away from the lawyers and into the cleaning up of these sites. The only real way to do this is to eliminate retroactive liability.

We consistently hear three arguments against retroactive elimination. One, eliminating retroactive liability would create a huge public works program. This is basically untrue. Under my bill, PRPs would not be released of liability until cleanup work was

completed.

Two, eliminating retroactive liability is unfair to the parties who

have been good and cleaned up their waste already.

Well, if you combine the fact that there haven't been 200 sites cleaned up as yet, and that nearly 90 percent of the total NPL cleanup bill has yet to be spent, the actual number of these good parties is minuscule.

And three, cleanups would be significantly more expensive under

a trust fund approach.

The implication here is that we have an efficient system today. Under our current system, EPA has no incentive to control costs, either its own or the costs of remedies it imposes on private parties since the PRP will pay. Plus, over 35 percent of all spending is wasted on transaction costs already. That is far from efficient.

H.R. 3800 is a good start, and we commend the good start. But H.R. 4161 is addressing all the major issues of Superfund in a way

which will allow us to settle this issue once and for all.

I will stop there, Mr. Chairman, in the interest of time, and look forward to the testimony.

Thank you very much.

Mr. APPLEGATE. Thank you, Mr. Zeliff.

Mr. Ewing.

Mr. EWING. Thank you, Mr. Chairman. And my appreciation to

you for holding these hearings.

I think that probably in all of our districts or most all of our districts, the reauthorization of Superfund could be a major improvement in one of the biggest programs going on in America, one of the most needed programs, but one of the programs that hasn't had the best track record and certainly hasn't accomplished what this Congress and prior Congresses hoped that it would do.

So I look forward to finding a solution to the retroactive problem, to the liability problem, to getting away from litigation and getting

to cleanup, which is what we all want.

Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Ewing.

Ms. Molinari.

Ms. Molinari. Mr. Chairman, I have no formal opening statement at this moment. Let me just echo the remarks of my colleagues, particularly on this side of the aisle, who express concern for reversing a tragic situation that has enveloped both our busi-

ness and our environment for far too long.

I want to thank you in particular for affording this committee extensive opportunities to really get to the bottom of how we can best approach this subject. And I do just want to lend my support to the intense activism of Mr. Zeliff, who has effectively driven us all crazy in getting us on-board to what I really do think is an appropriate solution.

Thank you. And to the many panels that will be with us today.

Mr. APPLEGATE. Thank you.

Mr. Horn.

Mr. HORN. Thank you, Mr. Chairman.

I commend you for holding these hearings, and what I want to see accomplished boils down to about 10 words. "More digging, cleaning and filling, and less filing, cleaning and stalling."

Mr. APPLEGATE. Very good. That sounds like a good commercial.

[Mr. Tucker's prepared statement follows:]

Opening Statement
for
Superfund Hearing
before
Water Resources Subcommittee
on
July 14, 1994
by
Congressman Walter R. Tucker, III

THANK YOU MR. CHAIRMAN, BEFORE THIS SUBCOMMITTEE WE HAVE THREE PANELS TO GIVE US THEIR TESTIMONY REGARDING THE SUPERFUND PROGRAM. WE HAVE HAD TWO PREVIOUS HEARINGS ON THE SUPERFUND PROGRAM AND WE HEARD SOME VERY HAVE TELLING CONCERNS FROM GROUPS ABOUT THE PROBLEMS SURROUNDING THE LIABILITY ASPECTS OF SUPERFUND. THIS SUBCOMMITTEE AND ITS MEMBERS NEED TO TAKE OUR TIME IN MOVING THIS BILL.

IS THIS BILL ADDRESSING ALL OF THE PROBLEMS THAT GROUPS HAVE WITH THE SUPERFUND PROGRAM, DOES IT GO FAR ENOUGH OR ARE WE NOT TAKING THE APPROPRIATE STEPS TO FIXING SUPERFUND PROGRAM? MR. CHAIRMAN THE COMMITTEE MEMBERS WILL LOOK TO YOU FOR GUIDANCE ON THIS BILL. I HOPE HR 3800 GOES FAR ENOUGH TO ADDRESS AND FIX THE PROBLEMS SURROUNDING THE SUPERFUND PROGRAM.

Mr. APPLEGATE. Well, that takes care of the statements. So again, to the panel, we have Mr. Richard Barth, who is Chairman, President and CEO, which takes in all of them, of CIBA Geigy; Bill Roberts, Legislative Director, Environmental Defense Fund; Richard Bliss, Counsel, National Paint and Coatings Association; Rena Steinzor, I hope I got that right, Legislative Counsel, American Communities for Cleanup Equity; John Arlington, Superfund Improvement Project, the American Insurance Companies; and Alfred Pollard, Senior Director of the Bankers Roundtable.

Welcome to the committee.

We will begin in the order in which I called.

Mr. Barth.

TESTIMONY OF RICHARD BARTH, CHAIRMAN, PRESIDENT AND CEO, CIBA GEIGY; BILL ROBERTS, LEGISLATIVE DIRECTOR, ENVIRONMENTAL DEFENSE FUND; RICHARD W. BLISS, COUNSEL, NATIONAL PAINT & COATINGS ASSOCIATION; RENA I. STEINZOR, LEGISLATIVE COUNSEL, AMERICAN COMMUNITIES FOR CLEANUP EQUITY; JOHN G. ARLINGTON, SUPERFUND IMPROVEMENT PROJECT, AMERICAN INSURANCE ASSOCIATION; ALFRED M. POLLARD, SENIOR DIRECTOR, BANKERS ROUNDTABLE

Mr. BARTH. Thank you, Mr. Chairman, and Members of the committee.

My name is Richard Barth, and I appreciate the opportunity to be here to discuss H.R. 3800, and I request that a copy of my written remarks be made part of a record.

Mr. APPLEGATE. They will be made part of the record, as all of

your statements will be.

Mr. BARTH. Thank you very much, sir.

In the United States, CIBA has some 16,000 employees, and we are primarily engaged in the chemical business. Our manufacturing plants and facilities are distributed throughout this country.

My message today is simple and straightforward: Superfund is in need of reform today, not tomorrow. This morning I will address three subjects: One, the consensus that has developed in support of H.R. 3800; two, CIBA's Superfund experience; and three, four major areas of improvement provided by H.R. 3800, one in the area of remedy selection, two, liability, three, insurance, and four, community participation.

Point one, Superfund reauthorization consensus: Many different groups agree that the Superfund law is in need of reform and overhaul. And we are urging the passage of H.R. 3800. Support for the bill, while not universal, does enjoy a critical mass of support from the industrial, insurance and banking sectors, the environmental

community, as well as local and State governments.

We are a member of a coalition of 65 like-minded companies, organizations and trade associations whose name is Advocates for Prompt Reform of Superfund. We believe the bill will achieve significant improvements over the present law. And the names of those members of the group are submitted as part of my written testimony.

Our mission has been to be a positive and constructive force to promote progressive reform and improvements to the Superfund program. The legislation before the committee represents thousands of hours of work on the part of affected and interested parties. It reconciles the essential needs of those parties and serves

the public interest.

Though H.R. 3800 received broad support when it was considered by the Energy and Commerce Committee, I am mindful of the fact that the process must continue to evolve in both the Senate and in this committee, where tremendous time and effort has been exerted toward Superfund reauthorization.

Point two, our own Superfund experience. We are actively involved in a number of Superfund sites, some company-owned, others operated by third parties. Our involvement stems from waste disposal practices, some of which date back almost half a century, and all of which were legal, permitted, and often state-of-the-art

practices.

We are presently spending on an annual rate of approximately \$60 million a year on Superfund. And since 1986, we have spent approximately \$350 million, and not included in that figure are significant litigation costs involving the issues of insurance coverage. A significant part of these outlays can be reduced without compromise to protection of human health and the environment.

Point three, tangible and measurable benefits from the proposed changes. I will now discuss four of the proposed improvements: One, remedy selection; two, liability; three, insurance; and four,

community participation.

Remedy selection: Remedy selection is the compass-setting step. H.R. 3800 establishes protective concentration levels which will promote prompt and consistent remedies having regard for acceptable risks. Where such protective concentration levels are not appropriate nor feasible, flexibility is retained to permit the establishment of site-specific cleanup standards, once again having regard for acceptable risk levels.

National cleanup levels and goals will ensure that residents, no matter where situated, will receive consistent and equivalent levels of protection. The bill makes allowances for sites with conditions which make it infeasible to clean up the site with existing technology, which under defined circumstances make the cleanup un-

reasonably costly.

Point three, liability. CIBA, like thousands of parties, have contributed to the creation of Superfund sites. I do not expect that any of us, with rare exceptions, set out to create these sites, but they were created nonetheless. Therefore, we accept our fair share of the

responsibility in correcting problems where they exist.

Establishment of a fair share allocation system in H.R. 3800 will ensure that liability will be equitably distributed amongst the parties, thereby correcting past problems where one party absorbed a disproportionate or the entire cost of cleanup. Small businesses and municipalities will be expeditiously and fairly handled under the new law, and orphan shares will be appropriately handled by the fund itself. Litigation over liability shares will, under H.R. 3800, no longer delay inordinately the cleanup of Superfund sites.

Point four—point three, insurance. The Environmental Insurance

Point four—point three, insurance. The Environmental Insurance Resolution Fund will drastically reduce costly time-consuming insurance litigation, by providing the insured and the insurer a means by which they can mutually achieve a practical resolution of their differences. The Environmental Insurance Resolution Fund provides this means to end this costly and unproductive litigation via a formula which factors in location of sites and the venue of the litigation. I believe the Environmental Insurance Resolution Fund constitutes a pragmatic solution to a very thorny problem.

Finally, community participation. Involvement of the community around a Superfund site is provided for at the outset of the remedial decision-making process. They are providing those most directly affected with a voice about how and when a site should be

remediated.

At CIBA, we have learned firsthand that public participation is an asset, not a detriment. Without public participation and support, the remedial process can be delayed for a protracted period of time. This is unfair to the community and ultimately will result

in higher cleanup costs for the PRPs.

In summation, we believe the proposed reforms will greatly improve the program. I think it is fair to say that traditional adversaries in the spirit of cooperation and in the spirit of identifying what we all see as common flaws in this program, that these traditional adversaries have extended themselves to points traditionally beyond their comfort zones in an effort to achieve a meaningful reform.

The synergy generated by government, businesses, both large and small, environmentalists, commune groups, banking and lending institutions, all collectively working together, have resulted in a far better bill than if each of us had insisted on his or her own special interests, to the exclusion of the others.

In recognizing the important work of this committee, everyone is aware, and I urge, as we all appreciate, that time is of the essence.

as this session has but a few months to go.

Thus, I ask the committee to support this unique effort by sustaining the momentum for Superfund reform in this session. H.R. 3800 provides an opportunity to achieve vast improvement of these very important issues without any constituencies' essential interests being prejudiced.

Mr. Chairman, this concludes my remarks.

I thank you once again for the opportunity to appear and I would be happy to answer any questions.

Thank you very much.

Mr. APPLEGATE. Thank you, Mr. Barth.

Mr. Roberts.

Mr. Roberts. On behalf of the Environmental Defense Fund, and its 250,000 members across the country, I want to thank Chairman Applegate, Representative Boehlert and the rest of the Members of this subcommittee for the opportunity to discuss H.R. 3800, the Superfund Reform Act of 1994. Along with other environmental organizations, EDF has worked hard to help craft legislation that will address the serious flaws in the current Superfund program, while at the same time assuring and enhancing the protection of human health and the environment.

We believe that H.R. 3800 largely achieves these objectives, and we urge this committee to act swiftly on this legislation. Time is short. With few legislative days remaining in this Congress, the largest obstacle to Superfund reauthorization is the calendar. However, the consequences of reauthorization delay could be severe.

Cleanups are likely to be postponed or slowed.

Potentially responsible parties will delay settlement discussions pending new legislation, and EPA will be forced to marshal its diminishing resources, postponing cleanup contracts and investigations. Inaction by this Congress will send a signal to the hundreds of communities who have already waited for cleanups, in many cases, more than a decade, that they must wait again. H.R. 3800 provides an opportunity to avoid this outcome.

Although far from perfect, H.R. 3800 squarely addresses the most serious problems with the current Superfund program. H.R. 3800 substantially improves community involvement in the remedy selection process, which will lead to improved cleanup decisions.

The bill improves upon current law by not only requiring cleanups to protect human health and the environment, but by requiring EPA to do so in a manner that provides consistent and equivalent

protection from community to community.

H.R. 3800 retains the current liability test of retroactive, strict, joint and several liability, which maintains the powerful incentive for cleanups and pollution prevention, while providing revenue for cleanups, but implements a workable and streamlined process to return the focus to cleanups, not lawsuits.

EDF believes that Superfund's liability system is the cornerstone of the Nation's hazardous waste and pollution prevention policies. Alterations in this system should be undertaken cautiously, without weakening the important incentives created by this regime.

Clearly, Superfund's main purpose is to remediate identified sites that pose a risk to human health and the environment. But Superfund and its liability system in particular, serves a much larger purpose in giving businesses a compelling incentive to address the risks associated with hazardous waste generation and

disposal.

In our view, H.R. 3800 retains these important incentives, but we wish to make clear that our continued support hinges on preserving those incentives. We will vigorously oppose efforts to eliminate or substantially weaken these incentives. In particular, we will oppose the elimination of retroactive liability, and we are not alone. Converting Superfund into a massive public works program funded by substantial new taxes was explicitly considered by EPA's Superfund Advisory Committee, a group that is composed of industry, environmentalists, community groups and others.

It was also considered by the National Commission on Superfund; once again, a broad-based interest stakeholders group. It was considered by the administration, and it has been considered by a number of State groups, including the National Governors Association, the National Association of Attorneys General, and State waste officials. And in each case, this approach was rejected. The

reasons are simple:

First, eliminating retroactive liability also eliminates any incentive for so-called voluntary cleanups. The only reason developers and others have been undertaking voluntary cleanups, particularly in the Midwest, is to avoid potential Superfund liability—lost my

place-eliminating retroactive liability would also eliminate voluntary cleanups, leaving many contaminated properties uncleaned.

Second, the elimination of retroactive liability will not reduce transactions costs. The bills we have seen do not simplify the process, but only invite further litigation.

Lawsuits will be fought over what occurred before and after the retroactive cutoff date, over whether conduct was wrongful or not,

and whether the site was a single party or a multiparty site.

Third, these proposals will raise taxes but not raise spending. None of the proposals we have reviewed suggest amending the various budget acts that place firm caps on Federal discretionary spending. Without an increase in those caps, Congress can raise all the money it wants in new taxes, but the appropriators will still have the same funds available that they do today, and no private sector funds to help pay for cleanups.

This committee's unsuccessful efforts to fully fund ISTEA, which EDF supports, graphically illustrates this problem. The result for Superfund will be fewer and slower cleanups.

Finally, the proposals are unfair. To us, it seems totally irresponsible for Congress to penalize those companies who agreed to participate in the cleanup process early, but reward those who are dragging their feet by providing liability relief. Currently, EPA estimates that between \$5 and \$10 billion have already been spent

by private parties to pay for Superfund cleanups.

In addition, this relief must be paid for by substantial taxes on all businesses, big and small, whether or not they engaged in poor waste management practices, or for that matter, whether they have wastes at all. Remember, that the corporate environmental income tax, which has been recommended as a vehicle to pay for cleanups, covers banks, telephone companies, stock brokerages and dozens of other businesses that have nothing to do with hazardous waste.

We recognize that some Members on this committee have concerns with H.R. 3800, and we want to work with the committee to address those concerns. However, we wish to make clear that EDF's support for this legislation is not unconditional. Major changes to the bill, particularly its liability, public participation, and groundwater provisions, could compel us to oppose this legislation, very reluctantly.

EDF believes that we have made a constructive and thoughtful approach to this process, which is one reason we are sitting on this panel today, and we want to work with this committee to further

Respond to questions whenever ready.

Mr. APPLEGATE. Thank you very much, Mr. Roberts.

Mr. BLISS. Thank you, Mr. Chairman, Mr. Boehlert.

My name is Richard Bliss. I am outside counsel to the National Paint and Coatings Association. On its behalf, I wish to express our thanks for the opportunity to comment on the Superfund reform

legislation pending before your subcommittee.

NPCA members include over 500 manufacturers of paints and coatings, and suppliers to the \$12.3 billion paint and coatings industry. Many NPCA members have been caught up in the web of Superfund litigation and have experienced great frustration and expense in attempting to find workable and equitable solutions to the

cases in which they have become involved.

In 1992, NPCA conducted a survey of its members and found that of the \$600 million expended by the industry on Superfund-related matters, only \$200 million went to cleanups, while \$400 million was consumed in transaction costs. Obviously, the existing system is not working to accomplish its intended purpose of environmental cleanup.

In recommending improvements to the Superfund law, NPCA has focused primarily on the issues of liability allocation, and settlement procedure. Dealing with these issues has proved to be among the most intractable of problems and the most wasteful of

resources.

This is especially true with respect to de minimis contributors to a site who, in most cases, only wish to know what the responsibility is, resolve it, and get back to business. While other matters addressed by the legislation are extremely important as well, unless an equitable and efficient means for stimulating the resolution of allocation disputes is incorporated into the law, cleanups will continue to take a back seat to confrontation. The public expects better, business, especially small business, needs better, and the environment deserves better.

On dealing with allocation problems, NPCA did not focus on attempting to modify or repeal strict, joint and several liability. Even though these legal enforcement weapons are extremely difficult to accept for non-negligent actions which were legal at the time and, in some cases, mandated by public authority. We do feel that a better approach is to place strict joint and several liability in its proper context. That is, as a last resort, as opposed to a first resort, to

find the funding necessary to effect cleanups.

Of course, no matter what allocation or liability scheme is adopted, whether it be a tax-based public works program, which would raise another set of equity and cost control issues, or "deep pockets" pursued under joint and several liability with multiple contribution suits to follow, society, of course, ultimately pays the bill. Most businessmen in our industry would rather see fairness and efficiency under the existing liability scheme, especially recognizing the realities of fixing the program sooner rather than later. Every year under the existing law means billions of unproductive dollars spent on litigation, while site plumes grow and cleanup costs escalate.

We find that Title IV of H.R. 3800 as reported by the House Energy and Commerce Committee, incorporates significant improvements in allocation of liability and settlement procedure over the existing law. We believe the improvements promise to form the framework of a system which will actually get Superfund cleanups accomplished in a relatively efficient manner.

Without these reforms, endless litigation, accompanied by huge transaction costs, will continue. This unfortunate result will accomplish nothing, other than enriching lawyers while causing all who have responsibility to help resolve this problem, to lose credibility

with the public.

Among the most salient improvements over existing law contained in Title IV are: One, an enforceable time line requiring EPA

as well as potentially responsible parties to take specific actions to-

ward resolving disputes.

Two, using neutral third party allocators to make determinations regarding fair share liability based on multiple factors such as volume, toxicity, mobility and so forth.

Three, requiring EPA to settle with de minimis and de micromis

parties early in the process.

And four, allowing EPA to consider ability to pay in assessing li-

ability. This latter factor is very important to small business.

While even this improved process may be viewed as "rough justice," there simply is no practical way to exact perfect justice in multiparty Superfund cleanup actions dealing with past behavior. Many of the concepts embodied in Title IV have been actively

Many of the concepts embodied in Title IV have been actively promoted by NPCA for a number of years. This is not to suggest that we are solely responsible for the development of all of Title IV's practicability and wisdom. But we did plant tons of people, recycled, of course, in every available forum on these issues.

When progress had stalled early this spring between advocates of a so-called "binding" allocation process versus a nonbinding system, we offered an intelligent melding of the two concepts. Mr. Chairman, I would like to offer for the record a brief comparison

of NPCA's proposals with Title IV.

While fault and room for improvement can be found by interested parties on all sides of the issues as complex as Title IV of H.R. 3800, as well as its other titles, this bill has found significant support among a very disparate group, including EPA, environmentalists as well as industry.

Of course, as we often say around here, if nobody loves it, it is

probably a balanced idea that may actually work.

When many of the various groups began discussing improvements to Superfund in earnest 2 years ago, there was only dim hope that any kind of consensus which would result in legislative agreement would be found. In fact, that was the case 3 months ago. Amazingly enough, a delicate balance of a workable process which few consider perfect, most can live and work with, and which will

produce vastly improved results, has been reached.

I would like to take this opportunity to recognize the special efforts of the National Commission on Superfund for helping to frame the background upon which such agreement could be reached. And EPA for its "open-door" consultations with representatives of all sides of these issues, and, of course, the leadership of Chairman Dingell and Swift and Congressman Moorhead and Oxley and their staffs for helping to keep this legislation moving at its darkest hour.

We also recognize that it was the hearings held in this committee in 1991 and 1992 that were extremely effective in stimulating the

Superfund reform movement that continues before you today.

We all know that time is our enemy. We are on the threshold of an opportunity to make vast improvements to a program which, to date, can best be described as an expensive disaster. NPCA strongly urges the subcommittee to give the bill as reported by the Energy and Commerce Committee serious consideration.

Again, we thank the Chairman and the subcommittee for affording us this opportunity to comment on this important legislation.

Thank you.

Mr. APPLEGATE. Thank you, Mr. Bliss.

Ms. Steinzor.

Ms. STEINZOR. Mr. Chairman and Members of the committee, I

appreciate the opportunity to appear before you today.

American Communities for Cleanup Equity is a national coalition of some 100 local governments in a dozen States, organized to advocate passage of Superfund reform legislation. We are part of a larger group of municipal organizations which includes the National Association of Counties, the National Association of Towns and Townships, the National League of Cities, the National School Boards Association, and the United States Conference of Mayors.

Boards Association, and the United States Conference of Mayors. All are on record as supporting passage of the Clinton administration Superfund bill this year. We are able to take this position because the bill contains meaningful relief for local governments caught in the Superfund liability system, and because as the host communities for the 1,200 Superfund sites, we believe the bill will expedite and improve the cleanup which is so vital to the commu-

nities that we represent.

As you know, the bill contains two distinct types of relief for local governments. First, when counties, cities and towns, or others, are deemed potentially responsible parties because they sent ordinary garbage and sewage sludge to Superfund sites, the legislation would cap their aggregate liability at 10 percent of total cleanup costs.

Second, when municipal governments are the owners or operators of such sites, the legislation requires that they be given an opportunity to demonstrate that they lack the ability to pay their allocated share of such costs. Both of these provisions were developed after lengthy negotiations among Superfund stakeholders, as you have heard in the context of EPA's NACEPT advisory group, and the National Commission on Superfund, and later with representatives of EPA and the Department of Justice as they drafted the administration's bill.

We are grateful for the consideration we were given by everyone in the process, and we especially appreciate the support of manufacturing sector PRPs who are ably represented on the panel here

today.

I am making a special point of mentioning the private sector PRP community because for several years, as you know, these companies not only were adamantly opposed to any special relief for local governments, but had filed third-party lawsuits against coun-

ties, cities and towns, in courts throughout the country.

Local governments demonstrated their seriousness about obtaining meaningful relief in a lengthy and spirited legislative campaign which eventually persuaded these companies, I hope, of the political and substantive merits of our position. However, it is also true that industry support for the bill's provisions to help local governments is offered in the remarkable spirit of compromise and consensus that has characterized this process. And I would like to spend the remainder of my time focusing on that point.

I am a veteran of the last Superfund reauthorization; I spent those four-and-a-half long and painful years as staff counsel for the Energy and Commerce Subcommittee, which had responsibility for the legislation. That process was characterized by pitched battles over virtually every significant issue. And there was quite literally not even a glimmer of consensus among Superfund's key stakeholders until the very end of the process, when we united in a last-ditch effort to persuade President Reagan to sign the bill so that we

would not have to do it all over again.

In the context of that history, what you see before you today is truly a political and legislative miracle, and I implore you to seize the moment and act on it, before the miracle and the momentum are lost. In recent days, you have heard testimony from groups urging you to slow the process down so that you can consider a radical reform proposal, conversion of Superfund into a public works program through the repeal of retroactive liability.

Those urging you to reconsider and delay are in a distinct minority. While, of course, they have a right to express their opinion, it would be tragic for all concerned if they are able to derail a timely reauthorization of this important program by pushing the same proposals that have been repeatedly rejected by Congress and the

rest of Superfund stakeholders for close to a decade.

Versions of the proposal now advocated by the Alliance for a Superfund Action Partnership, have been circulating on Capitol Hill since 1985. These proposals have never garnered support from a critical mass of Superfund stakeholders and there is no reason to think they will achieve any wider acceptance today.

The first and foremost reason is that, to be credible, the ASAP proposal will require billions of dollars each year in new taxes on industry. The industries that would be compelled to pay those taxes are absolutely unwilling to do so, and in the face of their op-

position, new taxes will not pass.

Beyond the very important issue of new taxes, the ASAP proposal does not address how a Superfund public works program could be implemented without exacerbating the contractor problems that now plague EPA. Study after study has demonstrated that when the government conducts a cleanup, it is significantly more expensive than when the private sector undertakes such work.

Private companies have an obvious incentive to watch every penny, while EPA has experienced difficulty in keeping capable staff to conduct effective contractor oversight. Even if we were willing to tolerate the inefficiencies of the current system and overlook the failure to deal with these crucial questions in the ASAP proposal, we should not dismiss the impact the proposal would have on the development of the technologies we so badly need to clean

up the sites over the long run.

By disconnecting American industry from the sites through the repeal of retroactive liability, we would set up a situation where the Army Corps of Engineers and EPA were our first and last hope to push technology to the point where we can walk away from this problem and turn our attention to other pressing environmental concerns. I mean no disrespect to those worthy agencies when I say that no one who is familiar with the intractable technical difficulties presented by Superfund sites can contemplate such a situation with equanimity.

The simple fact is that we need American industry's creativity, determination and resources to repair the destruction to our environment that toxics waste disposal has caused. It is both appropriate and necessary that those who produced the waste pioneer new technologies for cleaning it up.

Thank you for the opportunity to testify today, and I would be

pleased to answer any questions you may have.

Mr. APPLEGATE. Thank you, Ms. Steinzor.

Mr. Arlington.

Mr. Arlington. Mr. Chairman, Members of the committee, my name is John Arlington. I am Senior Counsel for Federal Affairs and Policy of the American Insurance Association. I would like to thank the committee for giving us the opportunity to testify today.

What we hope you are witnessing is the end of a "holy war." For nearly 14 years, insurers and their customers have engaged in extremely expensive litigation, litigation which has helped to fuel the delays of Superfund and which has wasted hundreds of millions of dollars.

Soldiers in this "holy war" are the litigation and claims departments of PRP companies and insurance companies. And their paid troops in the legal profession who object to any effort to resolve the

conflict and its issues.

These warriors come in two types: First, there are the true believers for whom the war is evil, but who will only lay down their arms for the perfect solution in which they believe, and then there are the self-interested, who believe that any outcome which does not satisfy their particular demands is unacceptable, no matter how many others or the society as a whole may benefit.

This holy war is raging even as we speak. But now a cease-fire is in the making. What many people thought would be impossible has happened. The insurers and PRPs have come up with a com-

promise, a creative way to settle their differences.

Title VIII of the administration's Superfund bill, H.R. 3800, and its companion, S. 1834, while unworkable in the form in which it was introduced, nonetheless served as a foundation for further negotiations.

We believe that the amendments to Title VIII adopted by the House Energy and Commerce Committee in May of this year, and as further refined by the Senate Subcommittee on Superfund in its June markup, constitute a workable, viable compromise which

should be enacted as soon as possible.

Mr. Chairman, there should be no mistake about it. The insurance industry's first preference would have been the original Treasury Department proposal to eliminate retroactive liability. However, we at AIA have long indicated our willingness to work with the Administration, the Congress, and all other parties to develop a practical solution to the Superfund problem.

We believe the compromise we have reached with members of the PRP community, is a workable alternative. We urge that everyone give this compromise a careful and thoughtful review. But it is important to remember, if we really want to solve this problem, we

will have to use this template.

Mr. Chairman, a few weeks ago the general counsel of a major chemical company called me to discuss some of the more arcane details of Title VIII. He was still trying to figure out whether this compromise was a good idea for his company. And I thought he said it all at the end of the conversation when he said: "You know, I really hope this thing becomes law. I can't wait to fire all those damn lawyers."

Mr. Chairman, I urge this committee to help us do just that.

Thank you.

Mr. APPLEGATE. I assume you are not a lawyer?

Mr. ARLINGTON. Actually, I am.

Mr. APPLEGATE. Sort of thought you were. I wanted you to admit it.

Mr. Pollard.

Mr. POLLARD. Thank you, Mr. Chairman, Members of the sub-committee. I am Alfred Pollard, Senior Director of the Bankers Roundtable. We represent the Nation's 125 largest banking institutions.

I am here today, however, to testify on behalf of a broad coalition of over 75 national trade associations and individual companies on two particular items of H.R. 3800, lender liability and fiduciary li-

ability.

Mr. Boehlert, in response to your opening concern about small business, I note in the list of coalition members that is attached to my testimony, I would guess there is over a million-and-a-half U.S. companies in this coalition when you look at realtors, home builders and others—National Federation of Independent Business—a lion's share are small business who have concerns about this flow of credit issue. I just digress for a moment there.

First, on security party liability, Section 407 of the bill would restore a 1992 EPA rule on secured party liability that was recently overturned in the DC Circuit Court of Appeals. This was overturned not on its merits, but rather on the basis of statutory foundation for issuing such a rule. The legislation would restore both

that authority and the specific rule.

I would really rather talk to you today a bit more about the bene-

fits and the beneficiaries of this section of H.R. 3800.

Today, some borrowers face added and often unnecessary costs because of the business line in which they engage, and others, because of the geographic areas they are in. Other borrowers simply cannot get credit at all for the same two reasons; because of the business line they are in or the geographic area in which they are located. These are unfortunate rules, and they impact adversely on the environment.

Now under this bill, secured parties will have to conduct their affairs appropriately. They must not participate in hazardous waste decisions, they must remain in a "financial" relation to property. If

they cross that line, then liability attaches.

But an important benefit of this section of H.R. 3800 is to the environment itself. Specifically, with greater certainty on potential liability, lenders can provide cleanup funding for the environment. This will benefit the Superfund program by permitting cleanup by the private sector and will benefit the environment by encouraging preventive actions before significant discharges occur.

Private sector action will avoid taxpayer costs for cleanup. Non-productive property will be put back into use. I don't know the ab-

solute dollars here, but it is my guess that private sector funding in the long run may be more critical to avoiding Superfund problems than the actual public sector and taxpayer dollars that have to be involved. And it is my belief that should be encouraged.

Another benefit is inner-city redevelopment. We have heard a lot about that lately. Lending institutions, such as those I represent, have a Community Reinvestment Act obligation to invest and provide credit across their communities. By clarifying the liability here, we believe that inner-city borrowers, who face either uncertain environmental histories or clear contamination, may be able to

get credit to make these cleanups.

I think, Mr. Zeliff, particularly of a trip I took up to Squam Lake, and I road past a lot of outlet malls which I know are popular. Some of those were occupying former industrial sites or small buildings that had been manufacturing facilities. That, believe it or not, was one of the instigations for legislation in this area, the inability in certain communities to get financing to take unused properties and put them back into productive use.

So we have a lot of unrepaired buildings due to environmental liability, not the economics of it, being unrepaired, being left in this

unfortunate and counterproductive state.

Finally, and most ironic, we have come across cases of compliance with environmental statutes being adversely impacted. And by that, I mean a situation—for example, we found Hispanic metalsmiths in Los Angeles who wanted to comply with the Clean Air Act, scrubbers, put those in to clean their facility, wanted to borrow money for that, wanted to move out of the building and comply with the law. But because their collateral, as for most small businesses, is the real property, the lenders were very reluctant because of potential Superfund liability. So here we have Superfund liability impairing compliance with Clean Air Act statutes.

Let me now turn briefly to fiduciary liability. One weakness of the existing EPA rule and even the recently proposed Resource Conservation and Recovery Act lender liability rule, is a failure to address fiduciaries. We commend to you for the action being under-

taken to address fiduciary liabilities.

As with lenders, fiduciaries are usually unable to control prior use of property before they are handed property in an estate. Section 605 of H.R. 3800 provides that property administered by a fi-

duciary estate remains liable under Superfund.

The bill goes further to note that fiduciaries are generally not personally liable. But here it is very specific in preventing abuses. Sham transactions and fiduciaries who had prior liability who seek to move into a trust situation to avoid it will not be able to do so

under this legislation.

Further, the bill encourages fiduciaries to seek a cleanup of properties by facilitating response actions under 107(d)(1) of CERCLA. I think the provisions of H.R. 3800 in this area would provide clarity, clear standards of liability, and positive encouragement. As with any section of the bill, I am sure there are technical changes that could be made or might be necessary.

On behalf of the coalition with whom I work and the association that I am employed by, I want to encourage the committee to act favorably on lender and fiduciary liability clarification contained in H.R. 3800. I hope my testimony has evidenced the benefits that should accrue.

Mr. APPLEGATE. Thank you very much to each of you for your statements, your positions. And I know that you are providing us

with a lot of invaluable input.

Let me see. Let me ask just a—and incidentally, we won't have time really, we are going to try to keep this within a reasonable time frame, because we are going to have a good deal to do. And we will be submitting questions to you and hope for your cooperation in expediting those answers back, because we are going to be in somewhat of a hurry.

We are hoping to perhaps get this thing moved within the next two weeks. And, you know, good Lord willing, the creek don't rise

and all, why, we will succeed.

Let me ask you this: Members have been hearing for some time that Superfund is broken and must be fixed, from the bottom up. Yet your various interest groups have agreed to retain Superfund's strict, joint and several and retroactive liability scheme. But what caused the members of your coalition who originally supported the removal of retroactive liability to change their position and support its retention? And how did the provisions of H.R. 3800 fix Superfund's problems with the current liability framework?

Anybody can answer.

Mr. BLISS. As far as the paint industry is concerned, of course, if you were writing a legal treatise on this matter, you might object to strict joint and several retroactive, all of those concepts, for the reasons that many of us have stated, that many of these actions

were legal when done and so forth.

However, strict joint and several becomes a problem when it is used as a sledgehammer coming out of the chute in a liability situation. If there is an alternative, if there is a reasonable process to allocate responsibility that is equitable and is efficient, then the issue of having strict joint and several liability as a tool or weapon in the law for the recalcitrant is much less of a problem.

In other words, H.R. 3800 puts an efficient process, we believe, into the law, which will allow a reasonable allocation of everybody's responsibility and will get settlements so that the use of strict joint and several will become much less of a problem in these cases. But further, Mr. Chairman, there is a political reality, that there are

many folks who would vigorously oppose that.

In looking at the calendar, we know that regardless of how you feel about it, that could be the death of this bill. And it is more important, in our view, to get a reasonable, equitable system for apportionment into the law that works and get on with our business and get this law modified.

Every year just for our industry, you are talking a \$100 million at least in transaction costs wasted because there is no allocation

system, which this bill would provide.

Mr. APPLEGATE. Well, I guess you answered the second part of my question with that. I will ask you this question, and I will probably ask the next panel also. And that is that the nonpriority list sites, word is that the Superfund liability or perhaps the fear of Superfund has led to billions of dollars in private party cleanups,

without EPA involvement at all. What incentives do parties have

to cleanup on sites if a liability scheme is eliminated?

Mr. ROBERTS. Mr. Chairman, this is one of our key points. One of the things that is true about Superfund is that it provides a com-

pelling incentive for companies to do what is smart.

If it is smart to do pollution prevention at their facility to prevent the creation of waste sites, they will do that. If it is cost-effective to clean up the back 40 before they have a Superfund site on their hands, they can do that. If they want to use cheap cost-effective technologies or innovative technologies, they can do that.

The Superfund liability system is the incentive for them to explore all those options. If you remove the liability system, and even if you remove retroactive liability, the compunction for these firms to investigate cost-effective ways to fix the problem on the back 40 is gone. And so what happens is these problems continue to fester, the site gets worse and worse and worse, and ultimately it is the Federal taxpayer who has to come in and bail out the problem. It neither makes public policy sense, or economic sense.

Mr. POLLARD. Mr. Chairman, not to disagree with Bill, I will call it expanding on what he said, I think for the financial community, we need to get repaid. Even without Superfund, you know, there was tort liability in the past, and when a borrower has collateral and real property, today we put terms in these loan extensions that

you must comply with environmental statutes.

We want that compliance, because we would like to be repaid, we would like them to be in business. The point here is, and I think in response to both this and your prior question, for the financial community is certainty. We need to know what the bright line is, what can we do.

Believe it or not, we had a court case in 1991, that made it unclear that we should include environmental compliance terms in contracts, because just by having the terminology, somehow we

were participating in the hazardous waste decision-making.

This was a case that I think probably there was a strong overreaction to, but that is what we respond to, is a court case that says, if you put in a term "the borrower should comply with environmental law," because you want him to stay in business and repay you, you may be at risk just by having that contract term. And that is what the purpose is here, is to get that type of silliness clarified.

Mr. APPLEGATE. Thank you very much.

Well, my time is up, and I will now refer to Mr. Boehlert.

Mr. BOEHLERT. I am curious, is this the first time all of you have appeared together on one panel? I know you appeared before in Energy and Commerce individually. This is the first time together?

Mr. BLISS. Yes.

Mr. BOEHLERT. This is history in the making. It is exciting, in many respects. I couldn't help but think, Mr. Arlington, as you mentioned, the holy war, that you represent the College of Cardinals, the white smoke has gone up the chimney and it says H.R. 3800.

I want to thank you for your testimony, because your testimony is very thorough. It anticipated a good share of the questions that

we have, particularly as we deal with retroactive liability and some of the other questions.

But, Mr. Bliss, maybe you can help me a little bit. On Tuesday a witness representing a small business in Massachusetts testified

that there is nothing in H.R. 3800 for small business.

And, Mr. Pollard, you might address this, too. That EPA currently has ample authority to cash out de minimis and de micromis parties, but has not done so. ASAP argues that there is nothing in the bill that will ensure that EPA will provide relief for small business as authorized in law and in the bill.

How do you respond to that?

Mr. BLISS. Well, I think there are appropriate incentives for one thing, under de minimis. EPA has three mandated time opportunities when they have to offer a settlement to de minimis contributors, and if they fail to meet the third time deadline, they can't collect a premium from a de minimis contributor in a subsequent action if they don't offer it.

On the other small business issues, the ability to pay that EPA is authorized to consider, ability to pay on certain businesses that have 20 or fewer employees—and I might point out that I believe it is 42 percent of the companies that are members of the National Paint and Coatings Association do have 20 or fewer employees.

Mr. BOEHLERT. That is why I particularly asked you to respond to the question. You see, I am willing to concern—and I would like all of you to think about responding to the impact on small busi-

ness.

Because, quite frankly, in the current generation, the Fortune 500 companies have been responsible for a significant net reduction in the number of Americans employed. And yet we have a record number of Americans employed. And it is small business that is creating the jobs.

But if we are not sensitive to the special needs of small business and we just heap more burdens on them, then we are not going to have those new jobs created. So that is why I am asking you to ad-

dress that

Mr. BLISS. I might just expand one thing; it is not in EPA's interest or the government's interests in general to cause economic harm through this statute or any other statute. I don't think that the Congress or any of the PRPs or anybody else sees anything to be gained by forcing small companies into bankruptcy over

Superfund liability issue.

It is in their interest to keep these guys in business and find a way for them to meet the responsibility where they can. And where they can't, to recognize that. Because just as the issue of strict, joint, several, retroactive, all those things, everybody realizes that it is unusual to blame people or charge people for things that were legal when they did them and so this is an unusual law. And what we are all trying to do is to figure out what works best, what causes the least harm.

You can make arguments for all kinds of other schemes, but we think that small business, large business, the environmentalists and everybody else, have a lot to gain by the scheme crafted in here, albeit may not perfect, but sure a lot better than the situation

now and it is very doable.

Mr. BOEHLERT. Is there anybody else who would like to respond to the small business?

Ms. Steinzor.

Ms. STEINZOR. Small business has gotten enmeshed in Superfund liability in many guises. And while Mr. Bliss has just explained to you what has happened to his members who produce waste that is similar to large companies, I would like to just speak for a moment to businesses like pizza stands and flower shops and bridal boutiques, who have been caught up in the Superfund liability system because they sent ordinary garbage to the sites. And the bill that is—H.R. 3800 would let them out of the liability system if they sent garbage.

It does—it does keep on the hook the cities, counties and towns, although it does cap our liability as I explained, but that is a major source of relief for I think some of the collateral small businesses that we often overlook in all of this. And I think it is a significant

relief for them.

Mr. Roberts. Let me add one other comment. The environmental community has worked very closely to try and square up to the issues faced by small business. Many Members on this committee, in fact, everybody in the House, received a letter from the Environmental Defense Fund, the Natural Resources Defense Council, and the Sierra Club, and the National Federation of Independent Businesses and the Small Business Legislative Council, indicating a set of proposals that would form the basis of a solution that could help all of us.

From our perspective in the environmental community, it makes no sense to put small business out of business. It is a source of, frankly, revenue for cleanup. And we find that providing a mean-

ingful process to make that happen, makes a lot of sense.

And second, there is way too much money spent on lawyers. And that particularly is a hardship faced by small business. They would much rather pay for cleanup. We would much rather have them pay for cleanup. Those proposals are incorporated in H.R. 3800.

Mr. BOEHLERT. I am glad to hear you say that. I am glad you are paying particular attention to small business, because it is critically important in terms of the economic base of the country.

One final very brief question for you, Mr. Roberts. It pertains to the section of the bill which clarifies the liability of parties to recycling transactions, which I believe is in Section 413. Reconditioners of steel drums for reuse, who process in excess of 40 million drums per year, have expressed to us concern that this provision as written might encourage sellers of used steel drums to opt for scrapping as opposed to reconditioning.

One, I want to ask if you are familiar with the problem; and two, hopefully you are familiar with the problem; and would you have any opposition to extension of this provision to reconditioning oper-

ations?

Mr. ROBERTS. Mr. Boehlert, we just got ahold of the language that would make this amendment yesterday. And what I will commit to you is to thoroughly review the legislation, discuss it with our colleagues to try to figure out a way to make something constructive happen out of that suggestion.

Mr. BOEHLERT. And then you will get back to me?

Mr. ROBERTS. You bet.

Mr. POLLARD. All right. Thank you, that is good enough for me. Thank you very much.

Mr. APPLEGATE. Thank you, Mr. Boehlert.

One concern that I had, what is it that is hazardous in pizza?

Ms. STEINZOR. Can I answer that? Mr. APPLEGATE. Besides the cheese.

Mr. BLISS. It depends on whose pizza it is.

Ms. STEINZOR. The reason is because there are trace amounts of hazardous substances in theory in the boxes or in the garbage that would come out of the small business. And there have been court decisions that have actually upheld garbage as triggering liability. So I don't—I thank you for asking, because I have often wondered myself.

Mr. APPLEGATE. Thank you very much.

Mr. Geren.

Mr. GEREN. Thank you, Mr. Chairman.

I want to ask a question that is a little far afield from what most of the—all the panelists have talked about today, and perhaps they don't have an opinion on this because it was an issue that was put into the Energy and Commerce bill with very little discussion.

But it is the so-called Schaefer Amendment, Section 208. Has to do with cleanup of Federal facilities. And I don't know if—I watch everybody's eyes glaze over when I raise that point or not. But it is a provision of the bill that causes me deep concern, because in this area of Federal facilities, it gives the States rights that they don't have under either Clean Water or existing Superfund legislation, and minimizes the role of the EPA in the oversight of the State selection of remedies.

And I am concerned that what we have done here is give the States every incentive to gold plate the cleanup, and no incentive not to. Because they have no copayment responsibilities of any sort

at all.

I think that something needs to be added to the bill to counter that incentive to gold plate. And there are a number of different ideas on how that might be accomplished. Perhaps requiring that the State have to pay some percentage of the cost of cleanup that goes above a Federal minimum. Perhaps grandfathering in cleanup sites that have already reached—have reached agreement on what the liability among the parties is and what the remedies are going to be. I am not trying to offer up a specific alternative, but I wanted to raise this concern in front of the committee and in front of the panel, and ask if you all would have any reservations about doing something to modify this section?

I don't want to get into an argument about exactly how much authority has been given to the States, because some people think that there are some provisions in here that would serve to counterbalance the incentive to gold plate. If that is the case, I want to add something to the will to clarify that that is in fact the case.

But would anybody on the panel like to comment on that?

If there is opposition among these various groups to having some counterbalance in the bill, I would like to hear it and get your input on it.

Mr. ROBERTS. If I might try and respond to that, the environmental community has worked very closely with the States. They have also worked very closely with the administration on a number of these provisions, including the Schaefer Amendment, which seeks to as many of the other provisions in the bill do, to enhance and clarify the role of States in the Superfund program.

I don't think anybody would support a requirement or even an opportunity for the States to insist upon gold-plate remedies on anybody. I think what we—where we would come out is to ensure that the treatment of Federal facilities is fully consistent with the

treatment of private facilities.

Currently, the States are not obligated to pay any share of a cleanup conducted solely by private parties. Since the Federal Government in many of these cases was the entity responsible for contamination, we believe that in similar setting, they should too be

fully responsible for the cleanup.

However, it may be important to clarify that gold-plated remedies should not be singularly applied to Federal facilities. That is certainly not our objective. And I would think it makes a lot of sense to take a look at the remedy selection provisions that are laid out in the bill. Because one of the objectives all of us have had in rewriting the Superfund law has been to try and ensure greater consistency and comparative equivalency between sites in how remedies are actually implemented, so that you don't have the opportunity for random swings, either on the gold-plating side for what we most fear, under cleanups.

So I think that the remedy selection provisions on their own afford a fairly good guarantee that remedies, in fact, will be implemented in an equal basis, no matter who the responsible party may be. But we would be happy to work with you on clarifying that

there is no intention to gold plate at these facilities.

Mr. GEREN. I appreciate that. Because even though the States have no financial responsibility, if it is a private party or the Federal Government, there are some inherent checks in the system when a State is going after a large employer/polluter. They don't want to break them.

They have some sense of what the financial limits are of the private party. They also want to make sure that the State doesn't become considered an enemy of business and have people move jobs

elsewhere.

None of those counterbalancing incentives will be present in looking at remedy selection for the Federal Government. And my goal would be to ensure that you do have comparable remedies selected for the private sector and Federal Government, and in some of the natural restraints to gold plating that are present when a State is dealing with private parties that aren't present when they are looking at the Federal Government or the DOD.

And I appreciate, I think we have—can agree on the goal of mak-

ing sure that the remedies are equitable.

I see the red light is on.

Mr. Chairman, if anyone else would like to comment on that, I would appreciate giving them the chance to have the opportunity.

Thank you, Mr. Chairman. Appreciate it.

Thank you.

Mr. APPLEGATE. Let's see, Mr. Hutchinson is not here.

We go to Mr. Zeliff.

Mr. ZELIFF. Thank you, Mr. Chairman.

First of all, I would like to applaud the efforts of your group in moving Superfund reform off the dime, and test a tragic set of circumstances in terms of the law that we presently have. And we can do better, we must do better. And I also sympathize with your need to work with the calendar.

Having said that, are you all familiar with our bill, H.R. 4161?

Is it generally all of you?

The problem that we have had, frankly, is we have submitted—we have worked 3 years on this, and we worked with EPA, be we worked with Bill Riley, Don Clay. Don came up for several days up

in New Hampshire.

We walked all our sites. We spent a lot of resources and volunteer effort in trying to come up with what we think is a perspective that makes sense. We worked with NACEPT, worked with the highest levels of EPA down here. We followed the progress once we were able to give our information, and then what happened through Treasury and other places. And then all of a sudden, it seemed to get to the White House and it changed a little bit.

And what I want to do is tell you that we are on your team, too.

And I am hopeful that you will be able to hear the next panel?

Will you have time to be able to hear our panel, too? Because I think we need to share information. We need to hear you and you need to hear us, because what we are trying to do here is make the bill better, make a terrible law a workable law.

With that idea, could you give me some—if you had to name two or three things that are wrong with the major law as it now exists

today, what would they be?

Mr. BARTH. I will take a shot at that.

We see the primary flaw and weakness in the existing law in the remedy selection process. And we, as I in my testimony, referred

to that as the compass-setting step.

And we find that it does result in circumstances that we have experienced in gold plating. And that may result from the preference for permanence, it may result from risk-assessment criteria which we feel address theoretical risks and multiplications of theoretical risks rather than addressing real risks. And as a result, our experience has been that we are faced with remedies which are overprotective, frankly, unnecessary. And that starts a cascading effect.

When you have a gold-plated cost factor staring at you, I think there is a tendency to resist, and that has resulted in litigation or redundant engineering studies and consultant studies, the whole

transactional panoply.

And so you get a cascading of, one, the remedial step is too expensive, but the present law certainly gives a strong preference to the expertise of the EPA, the Agency. So as a PRP, you don't have a lot of ammunition to defend your interest in a court setting. But still, if pressed, you do it best and you compound these remedial costs with transaction costs.

Mr. ZELIFF. But doesn't it go one step before that in terms of liability and—I mean, before you get to that process, isn't joint and

several one of the major problems that-

Mr. Barth. Well, joint and several is then another factor that cascades. As I say, we look at ab initio, that it is the remedies which are overshooting, and the compass is being set, let's say 20, 25 degrees more expensive than it has to, in the analogy of a compass, including transaction costs.

If you then find yourself in a situation where you are the last Indian at that site and you have to pick up all the costs, you are being saddled with costs that other people generated. You get a further cascading, a compounding effect. That could take your

costs, let's say, excess costs up to 30 percent.

Now, when I get to that 30 percent, if I can eliminate that 30 percent and get our cost block down to, say, from a \$100 to \$70, and then I have the opportunity to compromise with my insurance carrier, rather than do battle with them, and let's say, it is a 50-50 compromise, I can get my costs down to 35 percent, out-of-pocket, my direct costs, and I am prepared to cut down the size of this problem on that basis.

Mr. ZELIFF. Wouldn't you rather go into it, though, on propor-

tional liability, rather than be saddled with the-

Mr. Barth. Oh, absolutely. I think this law, this proposal on the fair share allocation, gives me the opportunity to sidestep, and properly so, being saddled with other parties' costs, the costs of re-

mediating other parties' wastes.

Mr. Zeliff. Retroactivity is the other thing. If I had to name two things, it would be retroactivity and joint and several in allocation of liability. And since I am running out of time here, I just feel, you know, in terms of holding people liable for something before the law was passed, I just think is un-American, unfair, and I just can't conceive how we can just close our eyes and move on. That is—I am just going to make that as a statement. We can hopefully talk about it in our panel a little bit.

I would like to refer you to some comments that were made on small business, and the U.S. Small Business Administration earlier this year said that any meaningful reform of the liability scheme must include elimination of retroactive liability for waste disposal prior to January 1, 1987. Small businesses generally were not required to maintain records of waste disposal prior to that date. Otherwise, small businesses are placed in the inequitable position

of defending their actions without records.

I guess also, in terms of the comments that have been made by the panel in terms of huge public works program and other things, I appreciate the fact that you are going to stay around, I will let our panel try to include those, incorporate those in their statements.

Again, I think we are all on the same team here. We need to change something that is badly flawed. You think H.R. 3800 is the best approach. Other than getting a panel is the only approach, only time, only opportunity we had to participate in the discussion, which is kind of tough being a Member of the committee, and I appreciate the Chairman allowing to us have a panel.

We gave copies to Chairman Dingell, we gave copies of a thick book that we worked 3 years on. It is kind of discouraging to work that hard and not have the opportunity to be a part of the process.

And so if we are anxious or aggressive, recognize that all we are trying to do is maybe present a few ideas that maybe you all haven't thought about. Maybe it would make H.R. 3800 better. And so that once and for all we can clean it up. Again, racing against the clock and the calendar, but let's not have to revisit it again like we did with the other law.

Mr. BARTH. If I may, Mr. Chairman, if I have time?

Mr. ZELIFF. As long as the Chairman will let you, you can go ahead.

Mr. APPLEGATE. You go ahead and finish that answer.

Mr. Barth. First of all, I appreciate the importance you attach to all parties, whether it is private, PRP, and I trust others, who are saddled with these costs of the past. And if this was in 1980 or 1986 and we had a chance to take a fresh cut at this whole issue, I might sound less counter-intuitive than I may sound to you now in my present position.

However, as I pointed out, we have spent \$350 million to date, and you had mentioned in an earlier remark that these past costs may be minuscule. They are very big, have been for us. And I think the EPA has testified there is 5 to 8 or 10 billion that has been

spent in the past.

But moving beyond that, as I said, what troubles us is the waste part of the program more. In business—I mean, waste and I guess everybody gets bothered by waste, unnecessary expenditures, with-

out health and the environment being benefited.

Two, the punitive and the inequitable features I think are most pinned into the joint and several feature. Not the retroactive. At least I find it more troublesome, inequitable, un-American, et cetera, to be saddled with what somebody else did, when we did

nothing intentional or improper.

With regard to the fact, if we created a nuisance, if we did create a nuisance, not at the time that we knew it, but now in hindsight and with greater knowledge it is determined what we have created is a nuisance, it strikes me that I am prepared to remediate it, if it is a true nuisance. Once again when only theoretical risk is involved and this results in gold plating; and then we feel we are being asked to clean up and correct situations which are not bona fide nuisances or concerns to other third parties.

But if, in fact, we did create a condition which it now yields the result we are imposing on third parties' interests and rights, I am

prepared to take that bill, that cost.

Mr. ZELIFF. Thank you, Mr. Chairman. I will just finish one last

comment.

The family that just came out, visited, he didn't know we were having a Superfund hearing here. He represents New Hampshire Ball Bearing. Let me tell you, he would have liked to come in here, he is with his kids and he wasn't dressed appropriately, but he said remind the committee that we just—we have spent \$6 million so far on Superfund as a PRP, and we haven't started to clean up the site yet.

Thank you, Mr. Chairman.

Mr. APPLEGATE. Thank you, Mr. Zeliff.

Mr. Menendez.

Mr. MENENDEZ. Thank you, Mr. Chairman.

Mr. Roberts, I would like to direct my questions to you. They are a little bit different than what we have been discussing so far. And

they go to the issue of community participation.

And I noted with interest on page 3 of your testimony, your recitation from the National Law Journal: Despite the fact that people of color are heavily overrepresented in metropolitan areas, the largest number of uncontrolled hazardous waste sites, the majority of sites which have been scored and slated for cleanup on the National Priorities List are in white communities and hence low-income and minority communities are often not able to participate in the process.

And my question with that preface of your own testimony is, is H.R. 3800 on the question of community participation really going

to reach our goals of community participation?

My concern is, is that the citizen information and access offices seem to be the vehicle by which participation on the community working groups is going to be determined. And as I read it, and maybe you can help me with this, there is no guarantees that in fact people ultimately from the community, living next to these sites, would in fact be—that is our expectation; but what do you

see in the legislation that, in essence, guarantees that goal?

Mr. Roberts. Well, clearly that is the intent, and I believe that the statute actually reflects that intent. One of the problems that we have heard from communities of all stripes is that the establishment of community working groups at the site, which everybody seems to agree is a good idea, doesn't happen very often. And the reason that we have been strong supporters of these statewide citizen organizations is to really find a vehicle to get communities engaged in the sites in their communities. And particularly in poor communities, in communities of color, where those folks have not been and have not really seemed to receive much assistance to participate in the process. There are numerous sites that don't even appear on the NPL that really ought to.

The way in which we have tried to ensure participation is through several mechanisms: First of all, the bill specifies who has to be on the community working group. And a majority of folks on that group have to be from the locally affected community, affected

meaning affected by the site.

Second, many of the important land-use decisions that will really drive cleanup in these cases we believe should be driven from the advice of this community working group; once again, of which a membership is comprised of a majority of local folks. And EPA is required by this bill to give substantial weight to the views of the community working group, and if they can't reach a consensus, then they have to give substantial weight to the views of the actually affected local citizens.

Clearly, the objective here, even at the State-organization level, is to provide for broad-based and appropriate representation, which is why once again the membership requirements call for folks, not just at NPL sites, but at sites that are not on the NPL but are from poor and minority communities, so that there is, even at the State-

level organization, a real emphasis in trying to go after and find out and identify sites that currently aren't on EPA's radar screen;

many times in poor and low-income communities.

Mr. MENENDEZ. And you feel that even though that even the existing wording of the legislation as it relates to those affected by the site, will be specific enough that it will draw—because I can envision some of the communities in my own district in New Jersey. I can envision how selection—and this has all too often been the process when it is left to wide discretion; people who are affected by the site, but they are not necessarily the people from the community.

Do you still believe that we will be able to include, via this process, people who truly are from the community, and also affected by

the site?

Mr. ROBERTS. Right, I have no problem to embellish upon the language that is in the provision right now to ensure that it is actually the real people affected in a meaningful and health-risk sense from that site. That is clearly the intent, that was clearly how we read those words.

If it needs to be made clearer, we would support those kinds of

changes.

Mr. MENENDEZ. One other question.

Do you see this as an opportunity to the stakeholders, and not the stakeholders of those who have to pay for the cleanup, but the stakeholders of the people who have lived with it for, in many cases, a good part of their lives, as this is an opportunity for creation of an environmental corps, that those who in fact were affected by the cleanup, by the Superfund site, now being involved as part of the participation and, in essence, an empowerment of that community to participate in the cleanup of the site?

Mr. ROBERTS. Absolutely. I mean, one of the—the themes by which we have been pursuing this, really fully at the guidance of local communities, not our own ideas, has been that by enhancing community participation in a meaningful way, an empowering way, early and frequently in the decision-making process, rather than at the end, which is what the law now requires, we will get better

cleanups, smarter cleanups.

Interestingly enough, what we have found is that many people in the business community who are responsible for paying the tab agree that that process actually yields better results. And what we believe is that the enhancements in the community participation provisions of this bill are really key to the remedy selection provisions of this bill. That process is still substantially within EPA's discretion. But we feel that coupled with the strengthening changes in public participation, it can deliver good results.

Mr. MENENDEZ. And if we created a corps of environmental cleanup in terms of a community participating not only in the decision-making as to what is the cleanup, but in the actual cleanup, do you think that is an opportunity that is worthwhile pursuing?

Mr. ROBERTS. I think so. One of the things that we have heard from communities is the desire to try and make sure that the people who actually are cleaning up the sites, many times in low-income communities with high unemployment rates, actually find

some benefit from doing that. So they actually not only help clean

up their neighborhood, but benefit financially from doing so.

I am not sure how all that cuts, and we have seen some proposals to do something like that. I would be open to talking about others.

Mr. MENENDEZ. Thank you. Thank you, Mr. Chairman.

Mr. Borski [presiding]. I thank the gentleman.

The gentleman from California, Mr. Horn is recognized.

Mr. HORN. Thank you very much, Mr. Chairman.

Mr. Bliss, I was very interested in your testimony. Let me ask you a couple of questions. Doesn't EPA currently have authority to use the nonbinding allocation of responsibility approach under existing law?

Mr. BLISS. Yes, they do. It is in the current law, but EPA—it is not required that they do it. It is an option that EPA can exercise. And I believe they have only used it in a few instances over the

past 6 or 8 years.

Mr. HORN. So the fact that they have essentially the same process as you were proposing, the problem is that they don't have to use it; is that it?

And under yours, they would? Or is there any difference?

Mr. BLISS. Well, I think there is a difference. A third party allocator with the kind of time lines that are contained in this proposal and the information-gathering authority that the allocator would have, along with EPA doing remedial investigation and turning the results of that over to the allocator, would result in a basis upon which this neutral party could make an allocation that EPA, for whatever reason, doesn't feel that it is equipped to do.

I might point out, at one point the paint industry, National Paint and Coatings, had a proposal that EPA should be required to make the allocation internally. We also had proposals 6 or 8 years ago that special masters be appointed by the Federal courts in these

cases to make the allocation.

So there have been a variety of proposals around, but all of the ones that we have been interested in would require some process by which a third party or EPA itself be required to make an allocation. Under the existing law, EPA has not done it, and they cited a number of reasons.

One is lack of resources, that they don't have the internal folks available in the regions that could do this. And I suppose there are other administrative reasons why they think it should be done by

an outside party.

We think that an outside allocator, a neutral party, probably on balance is the way to go, somebody who gets all the information but has a requirement to produce a result that is based on some kind of a factual record.

Mr. HORN. So you think, in essence, that your approach will make it easier for that to happen, is that it, than it is now under

EPA?

Mr. BLISS. Oh, I don't think there is any question about it.

Mr. ROBERTS. Can I add one thing, Congressman?

Mr. HORN. Sure.

Mr. ROBERTS. There is another significant difference between H.R. 3800 and the current nonbinding process. The current process is all undertaken in a backdrop of litigation. Whoever is suing who-

ever, that continues unabated.

A major difference with H.R. 3800 is that during the pendency of the allocation, which is required, there are no lawsuits. In fact, there is a moratorium on anybody who tries to initiate a lawsuit. So everybody goes through this process and does it there rather

than in the courthouse.

Mr. HORN. Well, in a sense that gets to my next question, which is by retaining the current liability scheme, it remains necessary to assign proportional blame for a site, which then determines how much each responsible party contributes, despite the new allocation process proposed in H.R. 3800. Seems then that what you have is you retain the same existing incentives in the current statute to fight, to be litigious, to make your own share as small as possible.

So what makes you think the allocation process in H.R. 3800 will

not be just as contentious as what we see today?

Mr. BLISS. Well, there are strong disincentives in this proposal not to take advantage of this allocation process, and work with the allocator. Everyone is given an opportunity under this process to present information based on what its share ought to be, using records, not only its own records, but EPA is going to have a repository of information regarding that site and the parties have the right to present this information to the allocator.

If they refuse to participate in the process and force the government to seek recovery through a Federal lawsuit, they are running the risk of ending up with liability for more than their fair share. They could end up being assigned liability for the shares of others

who are as yet unidentified.

But I might point out that another thing about this joint and several question everybody has been raising is that the Federal courts themselves in three circuits now have interpreted the joint and several provisions of this statute as not being automatic, that if there is a rational basis upon which the Agency can allocate blame, they can't ignore that and just sue the first "deep pockets" that comes down the pike and then make everybody sue each other for contribution.

So we think that the courts are heading in the right direction in putting some common sense into the common law theory of strict joint and several liability, the purpose of which originally was to force tort-feasors or those who cause some kind of harm to not put the burden on the injured party to figure out what happened, but

put the burden on themselves.

But in this case, you have got a Government Agency that has tremendous volume of information-gathering ability available to it, and it shouldn't be able to ignore that, even if they have to go after somebody in court who doesn't use the allocation process. But we believe the transaction costs involved with ignoring this allocation process would be such that virtually every PRP named would utilize it.

Mr. HORN. Mr. Roberts, last question, my understanding is H.R. 3800 basically punts the determination on an acceptable risk level

to the EPA to set, so long as that figure is on or between let's say

1 in 10,000, 1 in a million.

From the environmental community's perspective, is there a proper risk level? And if we were to set that risk level at an order of magnitude below where you think it should be, could you still support the bill?

Mr. ROBERTS. We have taken the position, as has the National Commission on Superfund, that there should be a single risk number and that single risk number should be set at 1 in a million. We

feel very strongly about that view.

You are correct in describing that the bill that was passed out by Energy and Commerce provides for a process, a regulatory negotiation process at EPA which would involve stakeholders to come to some determination about what that number would be. That is the process that we support.

Mr. HORN. Thank you.

Mr. Borski. The Chair thanks the gentleman.

Let me talk a little bit about the pace of cleanup, if I may. I think most would agree that the Superfund program has failed for 14 years to result in the pace of cleanups that we had hoped for.

If our goal is faster cleanups, at a less cost, would H.R. 3800 produce the results we want? Or are the opponents of this agreement, who want to eliminate retroactive liability and have a public works-type program, right that their proposal would bring on faster, cheaper cleanups?

Mr. BARTH. We believe that there will be faster cleanups under

H.R. 3800. I can only speak from our own personal experience.

I come back to this issue of remedy selection and the standards that we are obliged to meet which we think are unnecessary and producing gold-plated requirements on cleanups. As I said before, requiring us to address theoretical risks rather than real risks and use permanent solutions in almost every instance, rather than containment where appropriate, and if that goes off the table under the new law as we see it happening, we think there will be less controversy over these issues on remedy selection, less excess and redundant consultancy reports, engineering studies and litigation tactics, and we will get on with those cleanups because we will be focusing on what is essential up-front and early. So I am pretty confident that this will accelerate the process, this version as proposed.

Ms. STEINZOR. Mr. Chairman, if I could just address that for a moment. I want to make the point again that I made in my testi-

mony.

Under H.R. 3800, industry will remain involved in figuring out the best way to do the cleanups. And you have heard Mr. Barth talk about how confident he is, and you have heard Mr. Bliss talk about that, that if there is a proportional—an allocation system, that will allow industry to not be preoccupied with the kind of litigation that goes on under the current system, leaving them to focus on the best, most efficient way to accomplish how cleanup would take place.

And so it is not—not only do we think that the pace would be improved, but the quality would be maintained. Because the alternative is to have the government left completely to its own devices

to try and find the technology, develop the technology that we need so badly to make these cleanups effective over the long run. Just

would make that point.

Mr. ROBERTS. I just want to add one cautionary note, and it flows out of Tuesday's hearing on groundwater. I think we all have to recognize that Superfund cleanups are a lot more challenging and difficult than anybody imagined them to be in 1980. And so the pace, time and difficulty and complexity of a lot of these sites is something that we are all beginning to appreciate to a greater and

One of the things that I look at H.R. 3800 as doing is bringing some clarity to the process by which we design these remedies and by which we design the standards to meet and achieve those remedies. And we think that by involving everybody in the process, particularly the local community who are demanding action yesterday, there is going to be a real appreciation, even on their part, I

think, for the challenges that many of these sites pose.
Mr. POLLARD. Mr. Chairman, if I could just add, I know the focus of this legislation and most of the panel is on Superfund, but I would highlight that in terms of accelerating cleanups, the private sector, private financing, and small businesses that want to clean up today, they don't have Superfund sites, they don't want to have

Superfund sites, but they may have a problem.

If you go to a lender and mention digging up dirt, or a wrecker digging up a tank, he is happy to lend you the money for the business deal, but come back after you have done that environmental work. That is the other acceleration that I think will come, is prevention, what I call "preventive action." It is small sometimes. things you are never going to read about or hear about, but what people want to do, I think you described as voluntary action, is, in fact, I think another acceleration.

Mr. Borski. If we were to repeal retroactive liability, what would the impact be on current settlement negotiations as well as vol-

untary cleanup efforts?

Mr. ROBERTS. I could take a crack at that.

I think that one of the things that I see as a fairly formidable problem with retroactive liability is the transition between where we are and where that would take us. Many people, as we have talked about before, have already settled with EPA and the government for their responsibility and have paid, in many cases, large sums of money for those changes. People who are now considering paying for large chunks of Superfund cleanup costs will think again.

And what we are fearful of is that it will spawn yet again another raft of litigation over whether or not I did something before

or after a certain date.

Second, and I think this was what Alfred was alluding to, many businesses today, either because of their lenders or because of their own legal counsel, are undertaking a lot of steps that we never hear about and never see about, to either reduce the waste that they generate, handle them more responsibly, or in fact clean up problems before they become a severe problem.

All of which is done, in my mind, in business' discretion to fix problems in the most cost-effective and timely way they can. If you eliminate retroactive liability, many of those sites that are not on the Superfund list, and there are tens of thousands of them, will not get cleaned up because there is no reason to. Superfund creates the reason for voluntary cleanup, and we will lose that.

Mr. Borski. Thank you very much.

The gentleman from Pennsylvania, Mr. Clinger. Mr. CLINGER. Thank you very much, Mr. Chairman.

I thank the panel for your participation here this morning, and very helpful testimony. Talking a lot about risk and risk assessment seems to be a buzz word in this Congress and what we should do about it.

Do you think that we need to have a specific definition of how the sites would be rated should there be a gradation of risk or do you think this bill addresses that problem?

Mr. ROBERTS. I would like to tackle that.

I mean, one of the positions that we had early on in the process was exactly that, that you should tackle the worst sites first. One of the things that is true about—

Mr. CLINGER. Let me interrupt you—because the fact is that we

really have tended to tackle the easiest sites first, have we not?

Mr. ROBERTS. It has been mixed, I think. But the general notion

of tackling the worst first made a lot of sense to us.

I think the thing to appreciate is that the Superfund National Priorities List are the worst sites. As I said, there are literally tens of thousands of toxic waste sites, and you have to be in pretty imminent and substantial endangerment to health and environment to make it on the list. The real challenge to my mind is a practical one.

Even if you were to rate them in order. If you are 50, 75 percent through the cleanup of a site that is lower on the list, do you stop, move your backhoes to a new site because you have just discovered

it, and start up there?

It strikes us that this is a real management nightmare, potentially, forcing the Agency to walk down the list in order, even though its workload and the pipeline of projects that they are undertaking may be completely inconsistent with that list.

So we ended up concluding that this was really as much a management issue as anything, and not wanting to slow down cleanup at sites that were already well underway. We believe that the bill

as it is stated, deals with the problematic ones.

Mr. CLINGER. So you would be opposed to having any more specific language with regard to prioritization of risk?

Mr. ROBERTS. That is right.

Mr. CLINGER. Okay.

Anybody have a differing view on that?

Hearings before another committee, a number of us voiced concerns about the legislation, H.R. 3800, concerning the very strict standards for groundwater in terms of what is required to be cleaned up at a site. And I understand that the standard requires that groundwater, regardless, be clean or cleaner than tap water.

Does this cause anybody on the panel any concerns because of the potential for vastly increasing the cost of any given cleanup?

And I guess again I come back to this question: Why we are not applying some risk analysis in individual situations? Not all

groundwater is going to be used for drinking water. And yet we are going to treat all groundwater potentially as drinking water.

Shouldn't we make some differentiation here in terms of risk?

Mr. Barth. Well, I am really not technically competent to address it. My understanding on the issue is that this is more a technology issue than anything else and there is a recent study out, I think it is NRC has come out with it, and they point out that the technology is just not in hand to correct many existing contaminated groundwater conditions; whether they are or may be used for ground—drinking water purposes, or not.

And it is my understanding once again, being briefed on the proposed H.R. 3800, how that addresses this issue, is that if the technology is not within reach and hand, that clearly there will not

be-

Mr. CLINGER. In other words, a standard that the water be made better than tap water would not be imposed if in fact the tech-

nology did not exist?

Mr. Barth. Well, it can't be, you wouldn't get in that contradiction because the law specifically articulates the possibility that technology does not exist to remediate to that standard, and you don't—I think that will address the vast majority of these conflicts gets into the issue of whether certain groundwater or surface waters may or may not be drinking water. And then you could get in that argument, if the EPA is interpreting it, as it may be, drinking water and therefore imposing cleanup standards where there is technology and that that is an undue economic burden, I guess once again in that arena, taking a look at all of the complexities of this legislation, I am prepared to take my chances on that one.

Mr. CLINGER. You would say that this may be an imperfect solu-

tion?

Mr. BARTH. Yes, I think once again, these are complex problems and we try to nail each one down, I am afraid we won't get on with it.

Mr. CLINGER. Let me ask this one final question. It is a question

I asked Administrator Browner.

One of the concerns that I think a lot of us who live in the Northeast, and indeed throughout the country, are concerned about are the abandoned industrial sites that blight the countryside, particularly in the Northeast, but in other parts of the country as well. And largely the reason that they have not been utilized or retrofitted or put back into productive use is because of the risk that any buyer assumes with regard to the cleanup that may or may not exist.

Some of these sites have been polluted for 100 years or more, and therefore the risk is just not worth the cost to many potential buyers. Do you think that H.R. 3800 addresses this issue sufficiently?

Do you think it makes it very clear that we are trying to make

more productive use of these many abandoned sites?

Mr. POLLARD. The National Realty Committee represents a lot of the real estate industry, there is a quote in their publication from Sharpe James, the Mayor of Newark, New Jersey. Maybe I will give you that as an answer. He is head of the National League of Cities: "Current law perpetuates a policy of disinvestment in distressed urban areas by driving prospective enterprises away with excessive liability risks. It destroys the potential to restore and replenish the assets of our cities and it needlessly creates new demand for infrastructure and other public services in areas often hard-pressed to support them. On the other hand, a policy of sensible risk assessment and rehabilitation, not to mention a sensible liability framework, could restore many tracts of urban land to valuable uses and bring precious jobs to many blighted neighborhoods."

Speaking for the financial community, as I said, we have the Community Reinvestment Act that is telling us to extend credit to our communities. We want to do it. And I would add here, urban

and rural communities are involved in this.

I think we feel H.R. 3800, and what it does in our little section of the bill is every incentive—and I keep trying to maybe differentiate myself a bit. This is not Superfund money, this is private sector money that we see as a profit incentive—go out and extend it to small businesses or urban redevelopment, farm communities that want to clean up old tanks, or whatever it is they have, we would like to be in the business. It is the liability scheme that scared our folks away.

Mr. CLINGER. Any other comments? Mr. ROBERTS. Just two quick comments.

Congressman Upton over at the Energy and Commerce Committee worked with us and others to develop changes to the liability system for prospective purchasers of property for this purpose.

In addition, we worked very closely with Congressman Oxley on the development of what is now Title III of this bill in order to encourage voluntary cleanup. All with an eye towards trying to rehabilitate these industrial areas, particularly in Pennsylvania and elsewhere in the Midwest. And I think that he felt and Mr. Upton felt that that in fact was accomplished through those changes, which we support.

Mr. CLINGER. Well, that raises my comfort level a great deal,

gentlemen.

Thank you very much.

Mr. Borski. I thank the gentleman.

The gentleman from West Virginia, Mr. Wise is recognized.

Mr. WISE. I will be brief, Mr. Chairman.

I thank the panel and particularly those—that which I have heard earlier about communities' participation, because I think what everybody has learned, whether you are an environmentalist or on the industry side of it or the government side, is that the best thing to do is get the community involved early as opposed to later.

The community is going to be involved. The only question is whether it is a fire—a fire fight at the end of a plan being submitted, when it is much tougher to go back and maybe do it right the second time, or whether they are involved early. And in West Virginia we found the need for very, very early community involve-

ment.

Mr. Chairman, last week, I conducted a proceeding in my congressional district on the subject of Superfund reauthorization, and Chairman Applegate was very helpful in arranging this. I would like to ask unanimous consent to include in the record these proceedings and a summary of the testimony presented by my constituent companies and citizens who were there.

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Mr. BORSKI. Without objection, so ordered.

Mr. WISE. I would just make a note, Mr. Chairman, I received testimony from both corporate concerns in my district, including Union Carbide, Monsanto, and FMC. And I want to publicly thank them for their help, as well as that from the testimony for citizens living near or active in remediation efforts at the two Superfund sites I have in my congressional district, both the West Virginia Ordnance Works and Fike/Artel, and one that is being reviewed for inclusion on the NPL list at the Winfield locks.

I would like to raise a couple of concerns for later discussion, not asking the panel for a comment. Two of the sites I referred to are sites in which the Army Corps of Engineers is the lead Agency. And what concerns me is I want to make sure that the citizen participation provisions which I very much support are contained in H.R. 3800—that are contained in H.R. 3800, are kept in whatever

vehicle the Chairman chooses to offer for markup here.

In addition, I would be interested in making sure that if the Army Corps is a lead Agency at a site or is otherwise administering the remediation, that the Corps is also bound by the citizen participation provisions that will be enacted. While the whole notion of the Corps doing remediation at Superfund sites and not being totally covered by the provisions of the law concerns me greatly, it ought to concern particularly some of the corporate representatives here, because they will be—they can be included in this.

It may have been a DOD site, but there may also have been some corporate participation as well. It also has great implications as far as real estate transactions, banking transactions, and so on.

It would be my intention to review the markup vehicle in this light and join with you, Mr. Chairman, in making sure that the Corps does not slip out from under the review of the Superfund provisions, and I thank the Chair. And I thank the panel.

Mr. BORSKI. The Chair thanks the gentleman. The gentleman from Wisconsin, Mr. Petri. Mr. Petri. Thank you, Mr. Chairman.

I am not sure who to address this to, but perhaps Mr. Arlington

or one of the others would want to respond.

There was an article in today's Wall Street Journal by a Mr. M. R. Greenberg, who is the CEO of the American International Group, our Nation's largest commercial and industrial insurance organization, kind of raising a few concerns about the legislation

that is the subject of your testimony.

In particular, he says that the bill would create something called the Environmental Insurance Resolution Fund and that what this would do is to create an alternative means by which companies and other parties could recover their cleanup costs, encouraging them to shop for the best deal they can find, either through litigation or through the Environmental Insurance Resolution Fund mechanism. But, I guess, under one or the other of the bills, if 15 to 20 percent of the companies specifically reject the Environmental Insurance Resolution Fund alternative, it would be dissolved without further ado. I am curious to know how mechanically you envisage determining that 15 or 20 percent? And is there a time frame?

How do you determine the universe, what is 100 percent, what

number is that?

Is it weighted by liability somehow?

Or is it just everyone who is mentioned in one of these suits—such as in my district, farmers, gas station operators, and etc. Are law firms going through the telephone book practically and mailing out thousands of legal forms, joining people to these actions? And they ring doorbells and people come with these papers they have. These people don't even know where the dump site is, let alone why they are listed.

Are they then supposed to take some action and if they don't, they will be among the 15 percent who decided not to join this?

I am curious, mechanically, once this is passed, if it does pass, how will we know—how will we decide the universe? How will we know when we have got 15 to 20 percent? Is this something really

that sounds good but doesn't amount to much of anything?

Mr. Arlington. Well, I can certainly review with you in detail exactly the mechanics of the 85 percent threshold test for operation of the EIRF. But in brief, you raise a very good point. Because as originally proposed, it was thought that there would have to be, in essence, a count or a survey of all of the several thousands of PRPs involved in Superfund. Believe it or not, EPA doesn't have a list of all PRPs, we discovered.

We tried to figure out who they were. We came up with about 32,000. We have since discovered that many of those are highly repetitive. When you start reducing the number, it is actually many

fewer than that.

But to make a long story short, we concluded that wasn't the right group to measure, in any case, because the purpose of Title VIII is to resolve the insurance coverage litigation. And not all of those PRPs are involved in insurance coverage litigation. Many of them don't even have insurance, or many of them may have settled their insurance coverage claims with the insurance industry.

So the way the EIRF provision would work, as amended by the Energy and Commerce Committee and further refined by the Senate Subcommittee on Superfund in June, is that the groups surveyed would be all those who are currently involved in litigation with their insurance companies, that would be all pending insurance coverage suits, of which there are somewhere over about 1,200, and all those who have active claims pending with the insurance companies.

I can't tell you exactly how many that is, but I can tell you this, that our members tell us that it would take approximately, oh, a couple of days to figure out exactly who these people are, identify them and get their addresses. The bill would give the insurance industry 30 days after enactment to notify all of those people in that group of their options to either opt in under Title VIII or to reject

it and opt out.

Mr. Petri. So this would essentially be larger corporations that are currently in litigation with their insurers who is going to pay

for Superfund liability?

Mr. ARLINGTON. It would be a mix of both large corporations and many small PRPs as well. We realize that if you just measured all those who are in litigation, you would probably come up with most of the larger companies. And that is why we made it also all those with claims against their insurance companies. So that takes in the

people who aren't involved in that large litigation. It is the smaller companies.

Mr. Petri. And what about people who subsequently discover that they might have a claim against their insurance company but

aren't in that universe at this time?

Mr. ARLINGTON. They would always have a right to make a claim to the EIRF, whether it was next year or 20 years from now. And the beauty of it is they don't have to sue anybody, they don't have to hire a lawyer. All they have to do is go to the EIRF, present their claim, and it gets paid.

Mr. Borski. The time of the gentleman has expired.

The gentleman from California, Mr. Tucker is recognized.

Mr. TUCKER. Thank you very much, Mr. Chairman.

And my congratulations to this panel for the fine work that they have done, and I have been perusing some of their testimony, although I didn't have an opportunity to hear all of the live testimony this morning. But certainly some very important points have been made.

I want to just clarify what I believe to be your testimony, particularly that of Mr. Roberts here. In essence, what you are telling us is that "don't throw the baby out with the bath water." I mean, from what I gather, you are saying don't overhaul Superfund in a way that you lose some of the important essences in terms of the strong incentives for prevention and for voluntary cleanup. But at the same time, put a heavy emphasis on community participation, trying to standardize the remedy selection process, and meld those two, kind of take some of the old and some of the new and hopefully we can get this legislation done. And if we do not, the alternative would be certainly much, much more egregious, the alternative being to do nothing and to delay; is that kind of the sum and substance?

Mr. ROBERTS. Yes, that is right. I think the only thing I would add is that I think we also support reforms on the liability side, preserving the incentives but also trying to create a much more streamlined process so that we don't have as much litigation and

transactions cost.

Mr. TUCKER. And that was what you were speaking about when you talk about the allocation process as opposed to the litigious environment?

Mr. ROBERTS. Correct.

Mr. Tucker. That is something that is on everyone's mind.

Mr. ROBERTS. That is correct.

Mr. Tucker. I appreciate that, and I just want to applaud the work of the Chairman, Chairman Applegate, and, obviously, Members of this committee that worked very hard on this, and I am hoping, along with this panel, that we can see this markup happen and this bill come to a resolution where it can get on the Floor.

Mr. Borski. The chair thanks the gentleman.

The Chair recognizes the distinguished gentleman from Califor-

nia, the Chair of the Public Works Committee, Mr. Mineta.

The CHAIR. Thank you very much, Mr. Chairman. I appreciate very much the panel, and I apologize for not having been here for their presentation.

One proposal that we have heard about as it relates to Superfund reform—and this was brought out to us during our Tuesday hearings—and they were suggesting that the corporate environmental income tax be doubled in order to pay for Superfund cleanups, a surcharge on the alternative minimum, as I recall it.

The problem that I see with that is that, as you know, this committee raised money from the gasoline tax which goes into the highway trust fund. However, while the 1991 legislation, the Intermodal Surface Transportation Efficiency Act, increased the highway funds by 50 percent, and transit by 100 percent, we haven't

gotten ISTEA fully-funded.

I am wondering whether or not we are not looking at that same—down that same barrel when those folks are talking about increasing the tax in that way and so that we have a—we have the income coming in, but we don't have, really, the redesigned Superfund system actually getting that money for cleanup purposes.

Mr. Roberts, I am wondering if you might address that.

Mr. Roberts. Mr. Chairman, I think you are exactly right, and, indeed, you don't have to look any farther than the Superfund program itself to see evidence of that exact phenomenon. The current Superfund trust fund has an almost \$2 billion balance in it that the Appropriations Committee cannot spend because of various constraints in their discretionary spending opportunities, which is frustrating not just to us who don't see any of that money going out the door for cleanup but clearly frustrating the people who are at this table who pay that tax.

So one of the great concerns we have is that by eliminating retroactive liability and substituting it for a new tax without accompanying reforms in the budget process, which seem to us to be unwelcome, at least in our quick survey of this place, that we will increase taxes on many companies and not see any increase in spend-

ing authority for the Congress.

One of the things that retroactive liability does do is every dollar that that private party has agreed to spend for cleanup gets spent on cleanup. There is no discretionary spending cap, if you will, on private party spending. And that means that those dollars, both from the company's perspective and the community's perspective,

go for what they were intended, which is cleanup.

The CHAIR. The other thing that we have heard in terms of the group known as, I guess, ASAP, is that they support changing the liability scheme, and they reference a RCRA recordkeeping date of 1987 as a way to determine whether or not a waste should fall under the Superfund program or be exempt. Would anyone care to comment on making RCRA compliance the only basis for establishing liability?

One of the problems I think we get into is the bickering over whether or not it was prior to 1987, post-1987, et cetera. So I was

wondering if that doesn't present us with another problem.

Mr. ROBERTS. Let me try and tackle that. I am sure other people

have comments on that.

We have mentioned before about the potential litigation over finding out whether you fell on one side of that data or not. I would like to take a different tack for a moment. Using that as a benchmark for when you should have known better seems to us totally inappropriate. As Mr. Barth mentioned, whether or not there was a Federal statutory prohibition on a certain kind of activity does not necessarily in our mind mean there wasn't any wrongdoing. Indeed, the whole common law of nuisance is designed to deal with creating problems, whether or not there has been a statute written to prevent that kind of problem from

In our view, RCRA in and of itself is a very limited form of defining liability. Currently, approximately 85 percent of all of the hazardous materials generated in this country are not regulated by RCRA and hazardous wastes, and indeed some 40 percent of the wastes going to hazardous waste landfills is not regulated by RCRA. The reason companies are sending their waste to these facilities, even though they are not required to, is because of Superfund liability and the fear of potential exposure that those wastes might cause.

So, in sum, I think that using RCRA as your linchpin for determining liability is really the wrong statute and the wrong public

policy, whether or not you can resolve the cutoff date.

Ms. STEINZOR. Mr. Chairman, if I might just add, I think one of the things about the ASAP proposal that is really notable is that there is no firm cutoff date in the proposal, and that the RCRA cutoff date is one of the ones they suggest that could be used.

They also suggest such criteria as the impact on the speed and efficiency of cleanup, the number of current NPL sites and PRPs affected by all the various cutoff dates that could be chosen, the practical availability of records at most sites, the RCRA date and

the date which most effectively reduces transaction costs.

And if you try to meld all those criteria you could very easily, as I think Bill Roberts pointed out earlier, end up with a system that was so complicated in terms of deciding whether you were in or out that we would have more litigation over that than we have right now, and especially since there has been so much litigation under Superfund that the law is relatively well-settled at this point on various aspects of the system.

This would throw all of that out and start over again with this long list of criteria that I think would be very confusing to PRPs and to the courts. So it is also very hard to cost out the proposal.

You mentioned doubling of the corporate tax. There are some estimates that researchers of the future have done that would suggest that it would be more like a tripling or quadrupling. So I just wanted to expound on your question.

Thank you.

being created.

The CHAIR. Mr. Barth.

Mr. Barth. If I could add one comment. Bill Roberts here mentioned my statement that I do not have any problem with cleaning up bona fide conditions, bona fide conditions imposing upon third parties, and I characterize those as nuisances, but I didn't characterize them as having originated from wrongdoing. I think these are conditions which were created, as Congressman Zeliff points out, when it was legal and appropriate and a common standard to create those conditions. But it has, over passage of time and the

increase of knowledge and information, become identified as problems or as nuisances.

The wrongdoing which crept into the statute, I think, is—the vice is where you get the joint and several obligation imposed on people, the thesis that people are joint tort-feasors, which was not in fact the case, but that has nothing to do with whether a condition of nuisance was created under one format or another.

The CHAIR. Let me thank all of you for your participation in this whole issue on the reauthorization of Superfund. It is very, very

important.

And let me reiterate what Chairman Applegate has already indicated. Timing on this bill is going to be very, very tight. And so, as you know, this is the last day of the hearings, a series of hear-

ings that Chairman Applegate has had.

I want to commend both Chairman Applegate and Mr. Boehlert for their stewardship of this program in having these very, very informative hearings, but all of you are also very knowledgeable that we are under the gun because of the August recess coming up and so Mr. Applegate and I are trying to make sure that we address

the issue of timing of the Superfund reauthorization.

And our goal in conversations with leadership, Speaker Foley, is to bring Superfund to the Floor before the August recess. We understand that that kind of a schedule is not going to be easy to attain, but we are going to press forward because we know that Title IX of this bill has to go to the Committee on Ways and Means, and they have got to resolve the very contentious issue concerning the funding of the environmental insurance resolution fund. And so any conflicts between the versions of H.R. 3800 as adopted by the Energy and Commerce Committee as well as the Public Works and Transportation Committee will have to be resolved prior to our going to the Floor.

So if we are to reach the Floor before the August break, this committee will have to conclude markup by the end of July. This is not a lot of time. So we don't have room for any delay, and so we are going to be pushing on this issue since this is the last day of these

hearings.

But, again, I want to just thank everybody for their involvement on this. I recognize that we have a very delicate construction of a house of cards here. To the extent that there are any major revisions in this bill, it will make that job tougher in getting to the

Floor before the August break.

So, again, I just want to thank everybody for their input in helping us understand the issues. I appreciate very much your taking time from your own busy schedules to continue to be before our committees to inform us about your thoughts on this. And I do include everybody who has appeared before our Public Works and Transportation Committee.

Thank you very much, Mr. Chairman.

Mr. APPLEGATE [presiding]. Thank the Chairman.

Mr. Horn says he has a 30-second question, and I would hope

that you would limit it to a 30-second answer.

Mr. HORN. Mr. Arlington, I just want to clarify one point in the exchange between you and Congressman Petri. With reference to

the Environmental Resolution Insurance Fund, I take it you have absolute certainty that that 85 percent benchmark will be made.

Mr. ARLINGTON. Well, nothing is certain in this world, but we have made an assessment, as you might imagine, that we believe that the 85 percent threshold will be met. And as you can, I am sure, see very clearly, that was a very important question for our member companies. After all, if we go through Superfund reform and the 85 percent threshold is not met, from the insurance industry's point of view only part of a successful Superfund reform will have been realized. We will have lost the opportunity, and we don't see a lot of opportunity in the years to come to make any significant changes in Superfund.

So, yes, we have done a very serious assessment on our own part. We have talked to many policyholders. We believe that, in fact, the 85 percent threshold will be met.

Mr. HORN. Okay, thank you. Mr. APPLEGATE. Thank you, Mr. Horn.

And, again, thank you very, very much. It has been a little—a long, maybe not too tedious task for you, but we appreciate your input, very valuable. We hope to move on and expedite our work

in the very near future. Thanks again for coming.

Mr. APPLEGATE. And we will move on to the next panel, panel number two. And we have Shirley Burnett Young, Counsel of Rath, Young, Pignatelli and Oyer; City Manager Doug Elliot, the Town of Somersworth; and Roger Phillips, President and CEO of Bailey Corporation—all of New Hampshire.

TESTIMONY OF SHERILYN BURNETT YOUNG, COUNSEL, RATH, YOUNG, PIGNATELLI & OYER, CONCORD, NH; DOUGLAS EL-LIOT, JR., CITY MANAGER, TOWN OF SOMERSWORTH, SOMERSWORTH, NH; AND ROGER PHILLIPS, PRESIDENT AND CEO, BAILEY CORPORATION, SEABROOK, NH

Mr. APPLEGATE. I want to thank the panel for being here. You have had an opportunity to be able to sit in and listen to panel number one who may have some serious differences with your approach. I am sure you will be here to answer some of those, and I am sure they will be here to listen to what you have to say.

Mr. APPLEGATE. And, with that, we will begin with Ms. Young. Ms. YOUNG. Thank you, Mr. Chairman, and good morning, Mem-

bers of the subcommittee.
I am Sherilyn Burnett Young, and I am an attorney in private practice with the law firm of Rath, Young, Pignatelli and Oyer in Concord, NH. I have been practicing in the environmental area since 1982.

I am also a member of Congressman Zeliff's New Hampshire Superfund Task Force which is a group of about 35 members from a broad spectrum of interests who came to a consensus and made recommendations on Superfund reform from which Congressman

Zeliff's bill was created.

I became involved in one of the earlier Superfund sites in the country in 1982, a site called the Keefe Environmental Services Site in Epping, NH. This was a site originally approved by the regulators to accept hazardous waste from generators and transporters around the region. All of the parties involved in the site paid to send their waste to the site for appropriate treatment and disposal. The owner and operator of the site badly mishandled the waste which he received, and the site ultimately ended up on the

Superfund list.

Over 160 parties were named by EPA as potentially responsible parties, and at the time there were few cases decided and very little guidance as we struggled to reach a global settlement with the United States Government, the State of New Hampshire, the Town

of Epping, and all the other parties involved.

Since those early beginnings, I have been involved in numerous Superfund sites throughout the New England region. Surprisingly, New Hampshire alone has 17 Superfund sites, and one unlucky municipality which I represent, the Town of Londonderry, NH, has three Superfund sites within its borders and is a named PRP in two of them.

Like everyone else, I agree that Superfund is in need of a major cleanup of its own program. I would like to highlight some of my concerns and illustrate the points with specific examples from my

experience.

First, the process simply takes too long. I measure many of my cases as commencing BC, before children, and my oldest child is now 10 years old. The 1982 Keefe site case that I spoke of was only recently settled as late as December 1992. Unfortunately, these 10-year plus time frames are the rule, not the exception, in the Superfund cases I am involved in.

Everyone recognizes that transaction costs for Superfund cases are a staggering portion of the total costs. These delayed and lengthy cases are one of the biggest reasons for the excessive costs.

What to do about it? We must streamline the remedial studies, the remedial decisions, the remedial actions and expedite negotiations among the PRPs and the government entities. I represent that the administration's bill has the same goal, but I believe Congressman Zeliff's bill goes further to achieve those goals and would do the following:

First, it would provide for a greater State involvement and, wherever possible, allow the State to carry out the response actions and cost recovery cases alone. Once the State is given authorization, it would be the primary regulator, and the EPA would act in its oversight role to ensure regional and national consistency as

necessary.

Our experience with the New Hampshire Department of Environmental Services has been a very positive one. It has proven itself to be flexible, creative and willing to pursue new initiatives while at the same time being pragmatic about decisions made. If the State of New Hampshire were allowed to implement the Superfund process, transaction costs would be considerably reduced, and the time frame from initial studies to final cleanup action would be expedited.

Second, Congressman Zeliff's bill establishes a new framework for remedy selection and cleanup action. The components include immediate risk reduction measures to minimize and prevent any actual and imminent and substantial endangerment to public health. Once these immediate risks are addressed, it provides for rescoring of the residual risks posed by the site and the develop-

ment of a long-term response plan.

Going back to the earlier example of the Keefe site, while we reached settlement among the parties on December 1992, this site has yet to have the cleanup action completed. Now, more than 12 years since the process began, a process such as the one outlined in H.R. 4161 would significantly alter the approach taken at the Keefe site and should significantly expedite final cleanup measures.

Third, facilitate faster negotiations among parties to reach global settlements. Congressman Zeliff's bill would create a binding, not a nonbinding, but a binding proportional allocation of liability system which would result in an allocation of costs among parties

within 18 months of the commencement of the process.

One of the cases in which I am involved has about 30 parties, and we have spent over 3 years negotiating allocation issues at great transaction costs to each of the parties. To date, we have failed to reach a final global settlement among the group. In some instances, illegal fees paid are greater than the party's share of the actual response costs incurred.

The Zeliff approach is a much saner, disciplined one imposing discipline upon the parties by setting a short time frame within which a binding allocation of liability must be reached. That will

void the excessive negotiation costs many parties incur.

Another important component that we need to address is the restructure of the liability scheme as it currently exists. I recognize that both the administration's bill and Congressman Zeliff's bill both exempt so-called de micromis parties. It strengthens the protection for de minimis parties, and it has a provision to further address the liability of lenders and fiduciaries. It should also clarify the use of the innocent landowner defense, it should provide protection against liability for grantees of conservation easements, and it should create incentives for redevelopment of already polluted sites.

One of the sadder results of the Superfund process is that when new companies look to move to New Hampshire, they prefer to develop a pristine piece of land, formerly untouched, rather than retrofit a currently abandoned facility which might otherwise be suitable for their needs. Because of their great fear of liability under Superfund, they have left these sites alone. Congressman Zeliff's bill offers protection for such developers and at the same time prevents a windfall for those developers who benefit from site cleanup paid by other parties.

All of these initiatives are very important, but I believe Congress must be prepared to go further and actually eliminate the retroactive liability component of the Superfund act. It would virtually eliminate the cost recovery fight that consumes the transaction costs for the majority of Superfund sites and it would put the

money where it belongs, to the cleanup.

Parties that I represent find if incomprehensible that they are held jointly and severally responsible for significant costs at these Superfund sites because of acts taken prior to the enactment of the Superfund law, acts which were completely legal at the time and often the state of the art for disposal of wastes. In fact, in the Keefe site, those parties sent their waste there at the direction of the regulators to ensure that their wastes were being properly handled. Nevertheless, they still were held strictly and retroactively

liable for having sent their waste to the site.

The retroactive nature of the liability is especially unfair because the burden falls on those that are the survivors, as opposed to, in many cases, those who are the largest contributors but who have now gone out of business. For example, in many of the municipal Superfund sites in New Hampshire the greatest contributors of hazardous waste over the years of operation of these old town dumps were companies such as old mills that long ago went out of existence. The retroactive nature of liability imposes liability on those that are the last to be involved with the site or, in the case of municipal sites, current taxpayers who may not even have lived in the community during the time the dump was operating.

Finally, we must be more pragmatic in our selection of remedies, taking into consideration the economic impact to the parties and the community of the selected remedy and addressing the actual

risks, not the imagined risks, posed by a site.

In many of the cases in which I am involved, the selection of remedy includes the treatment of groundwater at the edge of the landfill to drinking water quality standards. This is required despite the fact the community itself has no intention of ever using the water at the edge of the old town dump for drinking water purposes. In fact, even if Superfund were not enacted, these communities would never imagine putting a drinking water well right at the edge of the old town dump.

However, because of the cleanup regulations superimposed from RCRA and other environmental statutes we find ourselves in a situation where EPA tells us it is required that we clean this water to drinking water quality standards whether anyone would ever

use it or not.

This approach to remedial selection is ridiculous. We have to consider the actual risks posed, the future realistic uses of the site, the economic benefit versus costs and what the community itself desires. The selection of remedy must be one that makes sense for that site. Certainly there is room for national consistency and a development of policy or criteria for selection to be followed nationally. Nevertheless, there must be an emphasis on the State and local consideration of what is the appropriate level of remedial re-

sponse.

Congressman Zeliff's bill would introduce a measure of sanity in the remedy selection process. It would require the State and/or the Federal Government to look at the actual risks posed by the site after immediate risk reduction measures are taken which prevent the actual and imminent and substantial endangerment to public health. It would require the risk assessment to be more relevant to the site involved. It would also create a community advisory council which would help investigate the current and reasonably expected future uses of the site and help guide the parties in the appropriate selection of remedy.

It would last allow for more flexibility and creativity in the selection of innovative approaches to cleanup. For example, with Congressman Zeliff's help and the State of New Hampshire's assist-

ance, the EPA has agreed to allow new technology for the cleanup of chlorinated solvents at the Somersworth Municipal Landfill Site

in Somersworth, NH.

This will be the first time this technology is used on such a large scale. It involves an in situ permeable wall through which groundwater will flow, with the contents of the wall, made of sand and metal filings, chemically remediating the chlorinated solvents as the water flows through the wall. We are very hopeful that this new technology will work, and it is considerably less costly than the generic approach of placing a cap over the landfill and placing collection and treatment wells around the cap.

EPA should work closely with the State and the community to allow for these flexible approaches wherever appropriate in an ef-

fort to maximize remedial efforts and minimize costs.

You have a difficult task before you, and I wish you success. Thank you for the opportunity to testify before you today. I would be happy to answer any questions which you might have.

Mr. APPLEGATE. Thank you very much, Ms. Young.

Mr. Elliot.

Mr. Elliot. Thank you, Mr. Chairman and Members of the sub-committee. My name is Doug Elliot, and I am the City Manager

for the City of Somersworth, NH.

Somersworth is a seacoast area community with a population of 11,250. We provide a full range of municipal services and have a combined city and school budget of approximately \$15 million with 83 employees.

As a City Manager involved in a Superfund site and a member of Congressman Zeliff's New Hampshire Superfund Task Force, I am grateful to be here today. I hope my comments provide you

with some real-world, down-to-earth food for thought.

The City's involvement with Superfund stems from the sanitary landfill which the City owns and operated from the mid-1930's until 1981. When the City joined the Lamprey Regional Co-op, at that time the City began closure proceedings which included the installation of monitoring wells.

As a result of the testing, the groundwater was found to contain volatile organic compounds, VOCs, which eventually resulted in the site's placement on the NPL, National Priority List, September 8,

1983.

In 1989, the Somersworth Landfill Trust was formed by the City of Somersworth and several interested industries and businesses. The group voluntarily agreed to complete the remedial investigation and feasibility study for the site.

On December 8, 1993, the EPA notified 31 parties, including the City, of their potential liability and of the EPA's proposed plan for

the site.

Just last month, the EPA record of decision selecting a final remedy for the landfill was issued. After about 11 years and \$2 million of local funds alone, not one drop of groundwater has been cleaned. Or, as Congressman Horn said earlier, the digging, hauling, treating, the actual work, clearly not a record of achievement.

Why is that and what should be done to improve Superfund's

performance in the future?

Obviously, these are among the many, many questions you are searching for answers in the hope of truly improving the Superfund

program and developing a political consensus.

Let me encourage you, first, if you have not already, to review the final report of the New Hampshire Superfund Task Force, a task force established in July 1992, by Congressman Zeliff. The task force addressed problems of the Superfund program in New Hampshire and made a number of recommendations.

This report is unique because of the cross-section of New Hampshire interests represented which provide a balance with regards to the issues dealt with and the recommendations made. This report, of course, provides the basis for the bill introduced by Representative Zeliff, known as the Comprehensive Superfund Improvement Act of 1994 or H.R. 4161.

I support this legislative effort because it offers needed and truly

comprehensive reform, not incremental, piecemeal reform.

Next I want to focus my comments on two essential issues, for I believe that any effort to reform Superfund must begin with these two key—these two core issues first. And, quite frankly, I don't see these issues addressed in H.R. 3800.

Key issue one, cleanup goals. First and foremost in any proposal must be a clear understanding of our cleanup goals. Is the goal environmental restoration of a public resource or the protection of public health? Congress must first resolve this issue in order to focus our Nation's limited resources.

My experience in Somersworth would indicate that the fundamental goal should be the protection of the public health. The restoration of groundwater to pristine standards, when such a resource will not be used for drinking water, makes no sense in a

world of ever-competing demands for finite resources.

Furthermore, the goal of cleaning contaminated groundwater to drinking water standards may be beyond present technology at many sites. You heard in earlier testimony from the President of CIBA Geigy about the limitations of the technology, and I would ditto those comments. Therefore, I urge you to focus on the primary purpose of the Superfund program and would hope that the consen-

sus is the protection of public health.

I am reminded of an anonymous quote about an earlier government project that was absent goals. It goes something like this: When Columbus left, he didn't know where he was headed. When he got there, he didn't know where he was at. And when he returned, he did not know where he had been. And he did it all on government money. Amusing but true. Oftentimes, we don't have a goal in mind where we are headed.

And, of course, another saying is, if you don't know where you are headed, any road will get you there. So I would emphasize that

we need to focus on clarification of the goals of Superfund.

Key issue two, risk-driven remedies. Under the existing Superfund law, every remedy must achieve the same level of clean-

liness, regardless of the actual risk present at the site.

For example, at the Somersworth site the risk assessment completed by the potentially responsible parties concluded that there is no current risk associated with the landfill. The only risk posed is a theoretical future risk for a small number of residents along Blackwater Road. This risk is based on the unlikely assumption that current or future residents will use well water rather than city water. This assumption is made despite city water being available along Blackwater Road since 1972.

And, of course, the naturally occurring poor quality of groundwater in the area—the groundwater suffers from high iron and manganese—the site, of course, is called—is on Blackwater Road,

and the city forefathers had good reason for calling it so.

Thus, EPA's risk assessments, I feel, are based on unrealistic, conservative assumptions. Furthermore, if a remedy is needed, it must be protective of human health, the environment and meet all Federal and State ARARs.

All of this results in a wasteful remedy driven by unrealistic and unnecessary cleanup standards instead of actual risks. By restructuring Superfund so that remedies are based on actual risk, millions of dollars could be saved in Somersworth and billions in the

Nation and at other Superfund sites.

We had earlier testimony talking about the problems with the remedy selection process and the risk selection process. A couple of the gentlemen that went before me talked about gold-plated remedies. I will share with you that you will continue to have gold-plated remedies if you don't deal with the two central issues, these two core issues.

So, in conclusion, if we truly want to improve the performance of Superfund then our efforts must be focused on clearly defining the cleanup goals and insuring that remedies are based on realistic risk assessments. Without addressing these two issues, the major problems with Superfund will continue to plague us and the public backlash will be even greater than we now experience.

Thank you for the opportunity to share these thoughts with you,

and I wish you good luck.

Mr. APPLEGATE. Thank you very much, Mr. Elliot, and we will need it.

Mr. Phillips.

Mr. PHILLIPS. Thank you, Mr. Chairman. I am very pleased to be here today to talk about the Superfund program and my participation in Bill Zeliff's New Hampshire Superfund Task Force. As a small business owner, I believe that Superfund liability is one of

the most serious issues facing small business in America.

A general introduction to myself and my company, the Bailey Corporation, may be helpful to put things in perspective. Bailey Corporation employs 375 people at our headquarters and plant in Seabrook, NH. Our business consists of designing, molding and painting plastic exterior components for Ford, General Motors and others in the automobile industry. We are a parts manufacturer for the automotive injuries.

Bailey's origins date back over 100 years to 1882 when the Bailey family built sleighs and carriages in Maine. We have been located

in Seabrook now for over 30 years.

The Bailey Corporation first learned of Superfund in the mid-1980s when we were informed of our potential liability at a landfill in Massachusetts. In this case, it seems that the Bailey Corporation, under prior ownership in the 1970s, lawfully and responsibly paid licensed waste haulers to dispose of drums of oil and paint wastes at an accredited landfill. The landfill later became a

Superfund site.

Ås a result of our liability, in 1988 we were bludgeoned into paying \$700,000 as Bailey's assigned share of the estimated \$30 million cost of cleanup. I say bludgeoned because when the larger PRPs at a Superfund site join together to form a site steering committee, we little guys have no choice—no practical choice, that is—but to join in because of the significant risk risks associated with going alone and pursuing an independent course.

Six years later, our \$700,000 hasn't gone very far. The site has yet to be cleaned up. As a small company with a net worth of only \$2 million at the time we paid the \$700,000 cleanup charge, I can tell you that there are many times in the past 6 ears when I have figured that the \$700,000, if that had been left in the Bailey bank account, it would have been put to more productive use than the

EPA has apparently made of it to date.

Moreover, the \$700,000 which we paid in connection with that landfill was not the end but merely the beginning of a treadmill which has gone on and on and on. In each of the 6 years since then, we have paid annual assessments of about \$40,000 each, levied by the steering committee on its members to pay for the steering committee's lawyers, consultants and administrators. When you add to this the fees that we continually pay to our lawyers for interacting with the committee, our total costs to date in connection with the landfill are over a million dollars, and they are still climbing. There is utterly no prospect that I can see under the existing legislation or under H.R. 3800 of these annual assessments ever ending, and, meanwhile, the site remains uncleaned.

On top of our significant liability and transaction costs, Superfund liability has greatly affected the Bailey Corporation, and

I suggest other businesses of our size, in four other ways.

We have had—first, we have had difficulty finding lenders who would lend us working capital because of the contingent liability of Superfund which continually hangs over one's head.

Second, a great deal of our executives' time is being spent solely on Superfund matters with very little to show for our efforts so far.

Third, Superfund has impeded our abilities to acquire other companies who we discover may have contingent Superfund liability. We have looked at several situations which made excellent business sense for an acquisition or a merger except in the regard that the—there was some unknown or contingent Superfund liability, and the risk involved was just not worth taking the chance.

And, lastly, our liability and transaction costs were money which we could have more profitably spent towards research and develop-

ment and training our workers.

Superfund was founded on the theory that the polluter must pay. Everybody has to agree with that principle. That is God, mother-hood and apple pie. But I do not agree with the broad definition

given to the parties who are dubbed polluters.

At many Superfund sites, the truly willful polluters or the midnight dumpers have often left or gone bankrupt. Usually the so-called polluters, quote, unquote, who are left holding the bag at these sites are companies like mine who were disposing of their

wastes according to the accepted practices at the time and to the

letter of the law.

I wholeheartedly agree with Superfund's goals of protecting human health and the environment, but it is difficult to stand by while the program further victimizes thousands of businesses like mine by applying retroactive, strict liability for actions that were proper and legal when they occurred. We don't regard ourselves—we did not regard ourselves then and we do not regard ourselves now as polluters.

As we all know, in the 1960s and the 1970s there were very low requirements in America for the handling and disposing of hazardous wastes. There is no doubt that some businesses may have used unlicensed waste haulers during this period, not because it was illegal but because it was cheaper. However, the vast majority, like Bailey, disposed of its waste in a thorough and environmentally proper manner at the time, and we are now being forced to pay a

penalty for having done the right thing at that time.

I have heard people suggest in earlier testimony that Superfund's retroactive punitive liability system provides an incentive for responsible waste management today and going forward. That simply makes no logical sense to me. Clear and tough prospective Superfund liability, as embodied in alternative reform legislation such as the Zeliff bill, provides ample incentive for future disposal actions.

Small businesses are at a distinct disadvantage under Superfund. Unlike larger companies, we do not have a team of lawyers to help argue our cases in court. We don't have in-house counsel nor do we have records of our waste disposal activities which date back to decades ago. Unlike municipalities, small businesses cannot raise taxes to help offset their potential liability costs.

The more my company gets involved in Superfund, the more attention I personally devote to the problem and away from running and building the business. Rather than spending time and money on ways to make Bailey more competitive, I am forced to spend sig-

nificant resources on our transaction costs.

I was honored to serve on Bill Zeliff's much-needed task force on Superfund, and I am very happy to see that he has crafted the task force's recommendations into his bill, and I am heartened that the elimination of retroactive liability serves as the cornerstone of that legislation.

As someone who talks frequently with other small business owners concerned with Superfund, I can tell you that this is overwhelmingly the biggest complaint about the program among small

business owners outside of Washington.

Both representative Zeliff's bill and the Alliance for a Superfund Action Partnership, or ASAP, of which I am also a member, advocate replacing Superfund's retroactive liability system with a broad-based trust fund paid for by businesses. This broad-based fund would help to eliminate much of the money currently spent on Superfund transaction costs, while concentrating on putting money into actual site cleanup. It would allow EPA to focus on swift, progressive cleanups at Superfund sites instead of getting bogged down in trying to assess who is to blame.

And as I see H.R. 3800—I am not an expert on its detail—but one of its thrusts, once again, perhaps using a different procedure and means, is to try to find out who is to blame. And I can suggest to you that when it comes to using the new allocation method and making reference to all the records that the EPA will have with respect to how many drums were put in by various people, here we go again with the lawyers. Because I can tell you the knee-jerk reaction of every businessman such as myself, when served with a notice to bring in a part of an allocation system, is to get on the phone and call out the gladiators and say, make sure that we are being treated fairly. And there go the transaction costs.

Importantly, both proposals of ASAP and the Zeliff bill maintain a modified version of Superfund's current liability system for future disposal actions to maintain incentives for responsible waste treat-

ment going forward.

Superfund's retroactive liability system, if left untouched, has the potential to destroy any small business in America for the reasons which I have referred to above. I urge Congress to fundamentally reform this most devastating aspect of the Superfund law. Until you come to grips with retroactive liability, in my opinion, Congress is merely rearranging the deck chairs.

Thank you for the opportunity to present my views. I will be

happy to answer any questions you might have.

Mr. APPLEGATE. Thank you very much.

Mr. Phillips, somebody mentioned arranging the deck chairs on the Titanic, and I think that is probably what we are dealing with here.

Winston Churchill, if I may borrow one of our British friend's former leaders, back in very early England, 1908, after he read the Web report on the domestic and social conditions of England, he said that I can see little glory in an empire which can rule the

waves and is unable to flush its sewers.

And I guess that struck me when I read that because, in dealing with this situation here, while we have trouble with the sewerage, too, in a lot of areas here we are in dealing with dump sites that people over the years have created by violating the ground. And this great and powerful nation that we have, the greatest and most powerful in the history of this world, has been unable to cope with it, to do anything about it. Maybe it is because of the system that we live in. I don't know.

But what we attempted to do back a number of years ago was to set up a Superfund program, and it has just been an absolute disaster because we really haven't done too much to address those conditions, and there are nearly 1,400 sites that have been deter-

mined, and they are on that list.

And somebody mentioned yesterday that at this rate it would take 300 or 400 years. Well, actually, I figured it out, and it would—if we went on at the rate we are doing it, at about 40, 50 per, that is exactly what it would take. If we figured 50 per every 15 years, that is approximately how long it would take.

Let me see if I can get something here. It is my understanding that our friend and colleague, Representative Zeliff, in his bill,

wants to eliminate the liability.

Now, the ASAP—I am sorry, the retroactive liability, which is quite a bit of difference, and it is my understanding that ASAP, of course, wants to do pretty much the same thing and replace it with a broad-based tax on business insurers and others with a stake in the cleanup.

Now, is that what your position is? Is that what the Zeliff bill does? I haven't seen anything on that. I have asked a couple of people for some specifics. Is that what you want? You want to replace

it? I know you are talking about prior to 1981.

Mr. PHILLIPS. In broad outline, yes, that is what the Zeliff bill

intends to do.

And although, Mr. Chairman, paying additional taxes is not my favorite pastime, I will tell you, as a businessman, I would find that preferable to the current system or to the system envisioned by H.R. 3800 if it did either one or both of two things: one, lent a little more certainty into what my liability is going to be going forward instead of waiting with bated breath to get an envelope in the mail that we are here again. There is another Superfund site, and you are a PRP. And then have to begin a process which could be never ending of whose share is what.

Or, second, I wouldn't mind paying additional taxes if I knew that every dollar or most of those dollars were going to clean up

the problem.

Paying money, you know, is not an unknown for most American businesses. We pay mostly—out of every dollar of revenue we bring in, we pay out, we think for value, somewhere between—if you are very lucky—93 cents and, if you are like us, about 97 cents of every dollar. So paying out money in taxes or for goods and services is not unknown, but what is really frustrating is when you pay the money and you don't get anything for it.

Mr. APPLEGATE. Well, that is true. And I am not totally unsym-

pathetic with you.

But, on the other hand, referring to what you are saying—you are paying in taxes and not getting anything for it—what about the companies who have already cleaned up their sites and spent millions and millions of dollars and who have assumed the responsibility and now they are going to be taxed so that their tax dollars can help other companies to shirk their responsibility and let the government pay for those, that cleanup? Wouldn't that eliminate in the future the cleaning sites—yes, if we do that, then what kind of incentives—

Mr. PHILLIPS. Well, in the first place, as I understand it, I think there was earlier testimony that only about 10 percent of the Superfund sites or cleanup has been undertaken. So from a proportionate basis, we are talking about a very small segment of the

business population.

Second, I understand the major attitude—and that is a part of me every once in a while. It is a part of human nature. But I don't think we can—my respectful submission to you, Mr. Chairman, would be to not let that factor impede what is otherwise a much better solution.

Mr. APPLEGATE. Well, you are a private business guy, and you are probably a capitalist, and you have really built your business,

and you have done all that kind of stuff. Don't you think-

Mr. PHILLIPS. I plead guilty, sir.

Mr. APPLEGATE. Yes. Good. Don't you think that the private sector would do a much better job than would the government? You know, the government's not good at fixing things or creating things or producing things. And would they be the proper agency really to say, well, we are going to take the money and we are going to

set forth and clean up these sites?

Mr. PHILLIPS. I believe that with every bone in my body. I think that the private sector doesn't do everything right all the time, but if you give us the chance, versus giving the government a chance, to get this stuff cleaned up and take the wraps off or take the energy away from trying to figure out how much John should pay and how much Bill should pay and how much Leo should pay. And let's say there is going to be a defined and projectable source of funds coming forward. Let's get on with the job and let business do it. Hold business's feet to the fire, but change the retroactive liability as to who eventually is going to wind up picking up the tab.

Ms. YOUNG. If I could add to that, my understanding of the Zeliff bill is that the private parties would, in fact, continue to do the

cleanup but would be eligible for reimbursement thereafter.

Mr. APPLEGATE. Would the—would all the private companies do the work under the Zeliff bill? Or would the government be involved in cleaning up certain numbers, a larger percentage, a ma-

jority of them?

Ms. Young. My understanding is that it wouldn't change the current process in terms of the parties that are responsible for cleaning up, but it would allow parties that could prove that their involvement was pre-1980 to actually recover whatever costs they have expended in the cleanup.

Mr. APPLEGATE. We will probably have some other questions as time goes on, and—but I will now yield to our very distinguished and good friend, the sponsor of the bill, and that which you sup-

port, Mr. Zeliff.

Mr. ZELIFF. Thank you, Mr. Chairman.

Mr. Phillips, I appreciate your coming down at your own expense today and providing this very valuable testimony. How would you—being on both the ASAP process and our process, how would you—I don't want to put you between a rock and a hard place, but

how would you describe the two bills?

Mr. PHILLIPS. I have friends in both groups. Frankly, I don't see any fundamental difference between them from my standpoint. I come from a concept—I am not an expert on all of the details in either of the bills, but I think I tried to make it quite plain, getting rid of retroactive liability, which is a cornerstone in both of the bills, to me is conceptually the purest, fairest, most effective way to go.

Mr. ZELIFF. And if you had to describe what two or three things are wrong with the present Superfund law in just a word or two, what would they be? I assume retroactivity would be one of them.

Mr. PHILLIPS. Well, it is anything—I think where the law was—Superfund law was well-intentioned. Everybody agrees with its goals. The basic flaw was it set up a liability system which inherently pitted everybody against each other. And I think out of that basic atmosphere or crafting of the procedure, which I see in a

slightly different form still remaining in H.R. 3800, it impedes the speed of the process and accelerates transaction fees tremendously.

Mr. ZELIFF. Would I be right in saying that you have a real prob-

lem with joint and several?

Mr. PHILLIPS. Well, I mean among—joint and several certainly throws gasoline on the fire in this case. But it is not the beginning or the end of the problem in my view. If you got rid of joint and several, you would still have a process. Every time you are going to try and say we must allocate, we must find out how much John should pay and how much Tom should pay, is you are setting up

a delaying and expensive procedure.

Mr. ZELIFF. I guess my concern with the administration's bill is if—and I don't know whether we have agreement or not, but—and both of you may want to add in—if joint and several and retroactivity are two major issues and if the administration's bill does not deal with either one of those to the degree that we think they should, then my question is are we going to be coming back to the table a year from now and trying to address, you know, a continued

flawed process?

Mr. Phillips. My—you know, my one man's judgment would be that 2 or 3 years from now we are all going to be saying to ourselves, oh, my God, I wish we had faced up at the time when we could—when we should have and we could have. Even though it may take an additional 3 to 4 months—I don't know your schedule, but even though that perhaps would not permit passage of something in the next 30 days, if we had faced up to it and done it right instead of having come back now to the table the third time.

Mr. ZELIFF. Mrs. Young and Mr. Elliot, any comments?

Ms. YOUNG. From my perspective, I agree that, looking at the administration's bill, it is an improvement, certainly, over what we currently have.

Mr. ZELIFF. Probably even agree that it is a big improvement?

Ms. Young. Big improvement, yes. So I don't see us sitting here as so much critics of the administration's bill as that it doesn't go far enough. And if we are truly trying to eliminate the millions of dollars spent on transaction costs and the long and lengthy delays in the process that get dragged out primarily because of the fight over liability, I just don't believe the current administration's bill goes far enough to address those issues.

Mr. ZELIFF. One of the things that we worked hard on is the binding versus nonbinding allocation process. We have a different view in ours. And being the attorney that you are and having been involved with as many sites, do you think the administration's pro-

gram of nonbinding will actually work?

Ms. YOUNG. I recognize that they have certain hammers in there that will create incentives to participate in the nonbinding process. But there are a couple of things that concern me. One is the timing of it

First, the bill suggests that you start out from the very beginning with an 18-month time frame to determine all the percentages of liability. And I simply don't think that is going to work unless, on parallel with that, there are some significant decisions on the cost of remedy. Because I have never seen a client yet that will accept a percentage share without knowing a percentage share of what.

Because 3 percent or 10 percent of 3 million is very different from 10 percent of 30 million. So I have concerns about the timing issue, for one.

I have further concerns that, as I stated earlier, we are going to involve ourselves in a process that may go 18 months, at the end of which parties that are significant players decide they don't like the result and because it is not binding they can then select the alternative of going to litigation at that point. And that would, in effect, delay the process even further.

Mr. ZELIFF. Yes.

Mr. Elliot. If I could say something, basically, you know, with H.R. 3800, it is an improvement. But we can do better than that. We must do better than that.

You know, as I said earlier, I think we have to focus on the clarification of our goal. I think we have to make sure that we have

risk-driven remedies.

As you are well familiar in Somersworth, I mentioned earlier we had the record of decision issued last month, and we were very thankful for the remedy that we obtained. Because we thought we might be looking down the gun barrel of pump treat, the innovative technology that we are going to be able to utilize there I think will prove to be very successful.

However, as you well know, going to many of the public meetings, the general public felt that we needed to do no more than just monitor the site. You know, I have a hard time explaining to them why we are issuing these bonds to study and, you know, when there is no threat to the public health there. So I think we can do

better than that.

You know, let me just share a couple of other things, if I might, as well. In the H.R. 3800 bill, you have a 10 percent municipal solid waste carve out. Understand that this only benefits the generators and the transporters, municipalities. It does nothing for community like Somersworth which owned and operated the landfill.

The only thing it does is shift cost, leave us holding the bag. We are dealt with I guess through the ability-to-pay provision, and you know if we want to keep transaction costs down, I don't see that doing that. If you read that, there is not a lot of meat to that. If I were a lawyer, I guess I would be licking my chops. Excuse me, Sheri. I see a lot of food for thought there.

But I think we need to focus on the clarification of the goals and risk-driven remedies. And I think we can do better and we must

do better than this.

Mr. ZELIFF. Let me ask you one quick question, because in Somersworth, Mr. Chairman, we had a situation where we spent about a year, I guess, looking at the opportunity to introduce innovative technology. And finally got the approval to do that. Under the administration's bill, our bill, would there be any difference in terms of encouraging creativity in that regard?

Mr. Elliot. I will probably have to defer to Sheri on that, because I am not familiar with the administration's bill and that particular idea, so I apologize. I can check it, give you my thoughts.

Mr. ZELIFF. Okay.

Ms. Young. One of the first thoughts I have is that if there truly were State delegation, I think we would find much more innovative, flexible and creative approaches happening much quicker. So I am a strong advocate of Congress actually delegating full authority to implement Superfund to the States when they determine a State is able to implement the program.

Mr. Zeliff. EPA still has management authority in that process? Ms. Young. Yes. I would assume it would be set up similar to, for example, the Clean Air Act and others, where when they delegate something to the State the EPA still has oversight and ensures consistency with the national regulations and the statutes. So I think, number one, that we would see more creative and flexi-

ble approaches if the State were involved.

I think, second, in the approach of your bill where you first address the immediate risks and then you take a second look and score the site based on what remains to be done, and including in that you are looking at what the present and future land use is dealing with the community, the municipality and the State, I think those parties are better able to make decisions about the appropriate level of remedy than Federal Government is sitting here in Washington.

Mr. ZELIFF. And do I have still enough time for another one or

two?

Mr. APPLEGATE. Sure.

Mr. ZELIFF. Thank you, sir.

In the comments that have been made in the earlier panel, eliminating—I will just going to read you a quote. "Eliminating retroactive liability would create a huge public works program." Maybe

you could comment on that relative to our bill.

Ms. Young. Well, as I said earlier, I don't believe that your bill changes the basic format of private parties doing cleanups, and I agree with Mr. Phillips that private parties generally will do a better job at less cost if they are in charge of those cleanups. So I don't see that the program of cleanup changes under the Zeliff bill from what it otherwise is, other than there may be different parties such as the State and the community with more involvement and an expedited decision on remedy.

Mr. ZELIFF. And then if I made the statement, eliminating retroactive liability is unfair to the parties who have been good and cleaned up their waste already, and I think Mr. Phillips has commented on that, and I think generally your comment is that that is small compared to addressing the bigger problem and the unfair-

ness of retroactivity in general.

Mr. PHILLIPS. Yes, that is—that is my—those are my sentiments

exactly.

Mr. Zeliff. And then, third thing, cleanups would be significantly more expensive under a trust fund approach or under our approach. Any comment there?

Ms. Young. I don't—I don't understand why they would need to be. Certainly in the program overall that is outlined in the Zeliff

bill. I don't believe that to be the case.

Mr. ZELIFF. If you say more expensive than what, you are referring to the present system. The present system is pretty darn expensive. I think anything we could do could improve on that.

Mr. Chairman, I know you probably have a few more questions of your own, in all fairness.

Mr. APPLEGATE. Well, I certainly have some Members who do.

Yes, okay, thank you very much, Mr. Zeliff.

Mr. Borski.

Mr. Borski. Thank you, Mr. Chairman.

And I want to also welcome and thank our panelists for coming

to Washington, DC, for their testimony today.

Ms. Young, let me start with you, if I may. You stated that the proposal to eliminate retroactive liability for pre-1980 waste disposal will reduce litigation. But wouldn't this proposal simply introduce new litigation about whether waste as disposed before or after the cutoff date?

Ms. YOUNG. Well, I would submit to you that if that were the only issue we were down to, is making a determination of when disposal took place, that that would be a relatively easy issue to

be addressed.

Mr. BORSKI. My question is whatever—pick a date—whatever date it is you would decide on, it would seem to me you would be bringing in a whole new layer of litigation as to whether or not I

was in or out of this site at that particular time.

Ms. Young. Actually, I can't speak on a national basis. I can only speak from my own experience. I don't think that would be a major problem in the cases in New Hampshire. Because many of the sites were closed before 1980, which is the date we are talking about. Most of the municipal landfill sites, most of the Superfund sites that we have been involved in, know exactly the time frame and were closed prior to that date.

Those that are not, I still believe we could work that issue out in a relatively straightforward manner. Particularly if you have, as the Zeliff bill suggests, an arbitrating panel that sits and makes

decisions about those types of issues.

Mr. Borski. And who would pay for these cleanups?

Ms. Young. In the first instance, the private parties would that are identified as being responsible. Even if they have then the ability to prove that their disposal took place prior to the 1980 date, they can later recover their costs expended. But, in the first instance, they still go forward andpay for the cleanup.

Mr. Borski. If the company disputed the liability, how would

that dispute be resolved?

Ms. YOUNG. If the company disputed its liability in the first instance?

Mr. Borski. Yes.

Ms. Young. My understanding—and, again, I don't pretend to be an expert on the bill—but my understanding of it is that, in the first instance, if the Superfund program works as it would currently, which is identifying the parties, EPA would be identifying parties they believe are responsible and requesting that the cleanup go forward.

And in any site that I have been involved in, there are a certain number of parties that recognize that they have liability. They step forward and take care of the cleanup. Others may fight and stay

in the weeds and may or may not get pulled back into it later.

I don't see that process changing. But what would change is that it would be easier, because parties would understand if they are capable of getting their money back at the end there would be less fighting about who is paying how much in the first instance.

Mr. BORSKI. Why would a company go forward, even if they knew they were responsible, if there was a government-backed fund that

would clean up the waste for them?

Ms. YOUNG. Well, again, my understanding of the Zeliff bill is that that is not the way it would work. The parties in the first in-

stance would be required to clean it up themselves.

Mr. Borski. Mr. Phillips, let me follow up on a question with you, if I may. The proposal that would fund the pre-1980 cleanups would require additional Federal funding and bureaucratic management, which would cost somewhere in the neighborhood of 20 percent more than the current Superfund program. Why would we want to replace a privately led program with a less efficient government led program?

Mr. PHILLIPS. Congressman, I am—I would have to take at face value the assumption that you made about additional costs. I don't

understand why there would be additional costs.

As I see the situation, once you can get rid of, for a significant segment of the Superfund sites, the need to determine which individual should pay how much but still keep the imperative on the PRPs, potentially reimbursed PRPs, to get the site cleaned up, I think you will see that effort proceed very rapidly.

It is—as I said before, it is simply the human nature reaction when you pit A against B against C that you are going to inevi-

tably have delay, delay, delay.

Mr. BORSKI. The question is would you say generally that the government would cost more to run a program than private industry?

Mr. PHILLIPS. Would the government cost more to run the program? I would say almost without reservation that the government would cost more to do anything in the world than private industry.

Mr. BORSKI. That is what this proposal would do. It would say that the government should take over and run it versus private in-

dustry.

Mr. PHILLIPS. That is not my understanding, sir. I am not an expert on it, and if you are right, then I would have to change some of my views, but my—because the last thing I want is government to get more involved.

Mr. Borski. Thank you, Mr. Chairman. Thank you very much for your responses. Mr. Applegate. Thank you, Mr. Borski.

Mr. Horn.

Mr. HORN. Thank you very much, Mr. Chairman.

I have been tremendously impressed by the testimony of each of you. I think Members usually are when they see people from the grass roots that have to deal with real problems and not simply Washington representatives that are representing particular interests that might have noble purposes but haven't really gotten down there where the action is.

And I think your testimony and your case study, if you will—I wish we all had to write it on the board like sixth graders until

we got it in our head. Because what you have said makes an awful

lot of sense to me.

I think one of the ways we solve the problem of those businesses that paid up over the last 10 years, no matter how absurd the process was—and anybody that thinks this process is anything but absurd has not followed the process—it seems to me tax credits could be awarded of some sort to those if they—so they aren't unfairly in competition with those that come later to the plate and pay up their fair share.

But I think what you advocated, Mr. Zeliff has worked on, does

make sense.

Mr. Elliot, I would just like to ask you one question. That Blackwater Road example is just marvelous. Here is EPA and others worrying about a few homes along the road, that it was clear when the founding fathers named that road there was evidence there was a lot of blackwater around the area. Do you know what year they named the road? Was it in the 1700s, the 1800s?

Mr. ELLIOT. I wish I did. I have been City Manager there for 4

years. I will have to look that one up.

Mr. HORN. Let me know if you can find out, because this is just

a typical example.

We have these situations in L.A., the Valley of Smokes, where the Indians had pollution in that area. Yet you would think it is all caused by cars. I think 99 percent probably is, but it was not an unusual phenomena before automobiles settled in the Los Angeles basin. And that is what your example reminds me of.

I just want to thank all of you for coming down here and sharing

your experience with us.

Mr. APPLEGATE. Thank you, Mr. Horn.

Mr. Wise.

Mr. WISE. Thank you, and I want to commend Mr. Zeliff for putting together an excellent panel and presenting some different

points of view.

The only question I would have might be for Ms. Young, and I don't think there is much disagreement here. You mentioned about State delegation, and indeed the administration bill, H.R. 3800, delegates to the States. The only concern that has been raised about that is whether or not in some cases the State enforcement might be more lax because of lack of resources, local political pressure, whatever, than Federal enforcement. That seems to be mitigated somewhat in the administration bill by the fact that national standards would be set so everybody has a benchmark that they have to clean up to, and if they don't then you invoke Federal jurisdiction. I just wondered if you had any comments on that.

Ms. Young. Yes, I do. I guess I have pretty strong views on that,

and, again, it is based on my experience in New Hampshire.

But I reject the notion that others know better than New Hampshire what is best for its community and its citizens. And I understand the argument that some communities or some States may be more rigorous in their enforcement than others, but I expect that that is the case, frankly, in many other areas when you go outside Superfund.

And we certainly have entrusted States and cities to make decisions about public health issues every day. And I just don't under-

stand why suddenly we are saying New Hampshire is not capable of making decisions about what is in the best interest of its own citizenry.

Mr. WISE. But would you support the concept, though, of a na-

tional standard that everyone has to meet?

Ms. Young. Yes, I would. I think that is the issue, though, that Mr. Elliot gets back to, which is I would do so emphasizing the public health issue and taking a much more realistic approach to what the risks are as opposed to imagined risks.

Mr. WISE. Thank you very much.

Mr. Elliot. If I could add something to that, just to reiterate it. I feel strongly that problems can best be solved at the level where the people are closest to the problem. The local government is closer than State, State is closer than the Federal Government. So it makes a lot of sense, and I think that is why we have had a lot of success with our remedy in Somersworth under the existing program, is because of the State's involvement and because of local government's involvement in it. So that is an important factor.

And, once again, we know we need to focus on what our cleanup goal is. Are we going to continue to see gold-plated remedies? You know, believe me, we have experienced it there. I mean, I don't know how many meetings we had with EPA where they basically said we agree with you, but we just can't do it under the existing

law. Talk to your Congressman. You know, it isn't-

Mr. WISE. Well, apparently, you all did. Thank you very much.

Mr. APPLEGATE. Thank you, Mr. Wise.

Ms. Shepherd.

Ms. SHEPHERD. Thank you, Mr. Chairman.

And thank you for coming and presenting your experience to us. I think that we are all coming at this from our own experiences. I come from a district that has 13 Superfund sites in it, and I have

two very different experiences with two of the sites.

One of them is an enormous site of a tailing—of a steel mill that left acid tailings, and they are all piled up, and they are very dangerous, and they are on a river that runs through our valley. And the community was not involved in the beginning in deciding what to do, and the litigation proceeded as you described. The PRPs came to a conclusion about how much they would all put in. That money is all set aside now.

And the entire motivation of this site—and it was a listed Superfund site—unfortunately has been not to go to the gold-plated remedy but to go to the cheapest remedy. And it is a remedy that doesn't satisfy the community that lives around this Superfund

site. And they have out of hand rejected it.

The remedy is a remedy that suits EPA better because it is cheapest, and it suits the PRPs because it is the cheapest and it is the amount of money they have there to spend. But it is a remedy that would cap this site in order to keep from poisoning the aquifer, which is the main aquifer for the entire county of Salt Lake and a million people, and there is real danger of poisoning the aquifer. You would have to cap the site and have a pump and treat water cleansing process going on literally forever which the State would have to pay for.

Now, that strikes me as a terrible, terrible solution. It is, however, a site where the steel mill in question responsible for most of this went out of business years and years and years ago. So

there is not any company to go to to get payment for this.

Let me contrast that to another site, the largest open pit copper mine in the world, has been mining since the end of the last century, dumping tailings into streams that flow into the center part of the valley. Seepage from the tailings have created a plume that is moving directly towards the water source.

It is owned by Rio Tinto Zinc, and they do not want to be listed as a Superfund site. They have staved off listing by cleaning up themselves. They have now spent \$100 million cleaning it up themselves. They are going—they are committed to spending nearly that

much again.

And it strikes me that the law that you are proposing here would leave that good-faith effort unfairly out in the cold. Because you are proposing that Kennecot Copper be taxed to pay for something they have already spent \$100 million doing voluntarily. That would

concern me a great deal.

And then, on the other hand, I am wondering, Mr. Phillips—and I owned a business, too, and so I really commiserate with your business concerns. But I am wondering why would I want to be taxed as a business to pay for a company that went out of business 30 years ago?

And I know that this is really most of—depending on where you—what year you put your cutoff date, you are really talking about taxing companies of today and into the future for mistakes of the past or illegalities of the past. They are going to fall into one

of those two categories.

And that doesn't feel fair to me either. I guess I understand the current law doesn't feel fair, but this proposal feels equally unfair, in my little microcosm of two very contrasting situations. It feels very unfair in both cases.

And I just like your comment on that, because I am sure the

Utah situation isn't unusual.

Mr. PHILLIPS. Well, taking the second situation, I can understand that—I can certainly understand your question. I would say that—and I can't speak for Kennecot, but, if I could, I would—or as a general taxpayer into this larger fund I would say, okay, the major thing is let's get all of these things cleaned up as economically as we can and as quickly as we can. And the ticket to doing that, the way to do that, is to dispense with trying to pit A versus B versus C.

And although that may result in some people getting a free ride, if you will—again, I revert to what I believe is the case. In certain instances, certainly in the Rio Tinto instance, a hundred million dollars is not only nothing to sneeze at, it is not something that you and I perhaps have seen very recently. It may work some hardship.

And one of the congressmen has said, okay, maybe the Zeliff proposal ought to be looked at from the standpoint of what can we do

to maybe even up the game?

But, by and large, I think all of us, every taxpayer, every company that is paying taxes in this country, will be a winner. And the

environment will be the winner if we get rid of the debris of trying

to fix blame and have a public tax fund address the problem.

Ms. Shepherd. Let me ask you a question about your business concern and reflect it back to you and see if I understood you correctly. Because I think it was always my concern when I was in business. And that is that what you hated the most about your experience was that it is never ending. You don't know. There is a lot of uncertainty associated with it. Is that correct? You know, you—as much as you hate paying \$700,000, if that would have been the end of it, you would have had a certain amount of peace.

Mr. PHILLIPS. Well, that is one of my frustrations, certainly, and from a business—as you say, being able to project, instead of a question mark, that you don't know what it may be and you—and, equally important, that you can't tell your bank what it may be under a taxing program. You can calculate that with some degree

of better certainty.

The second frustration is we pay—as I said, we pay—all businesses pay out almost for every dollar they take in, unless they are very, very lucky, 90 some odd cents of it. But when you get value

for it, you don't mind as much.

And we pay a lot—all of us pay a lot of taxes. When we get value for it, okay. But the frustration has been this \$700,000-I don't know who is holding it. I don't know where it is. But the site hasn't been cleaned up. And we desperately needed that \$700,000 at the time we spent it. That is the frustration of it.

Ms. Shepherd. If—if the uncertainty were taken out, that clears up one portion of it. And I think the proposal, the administration's proposal, does take the uncertainty out of it. Because either a small businessperson is seen as de minimis and is let off the hook altogether or there is a determination of what the share is and then there is an absolute agreement never, never, never to come back. So you would agree that that—that at least takes the uncertainty

Mr. PHILLIPS. Respectfully, Congresswoman, I would not agree to that. I think for at least 18 months there will be that uncertainty as to whether the allocation is going to be X or Y or Z, and then there will be another significant period before we know whetherwhat base that percentage is going to be applied to. Is X and Y or

Z going to be applied to 3 million or 30 million?

Ms. Shepherd. So that is—that timing issue you see as very critical?

Mr. PHILLIPS. Yes.

Ms. SHEPHERD. Let me ask Mr. Elliot a question on community process and risk assessment, because I have a lot of concern about that. The reason I already alluded to, that I have concern about that, is that in my own experience the community has differed greatly from EPA in terms of what they consider risk.

We live in a very hazardous earthquake zone, for example. And the community believes and I believe strongly that EPA has not adequately assessed the risk of capping this site and that they are

underestimating the risk greatly.

The bill that you propose reads, to me, to give community, the community advisory council, about the same amount of power as the community has now, which is not very much. And so I don'tI don't know. I have some real qualms about not having the community have a whole lot more to say about how much risk they feel

is involved.

Mr. Elliot. I think the bill provides community involvement. I would like to see a little bit more. But, you know, and I agree with you wholeheartedly, it is very, very important. As I said earlier, the problems can best be solved at the local government level, in my opinion. And, you know, so it is—it is important to have that involvement.

Without question, you know, it is surprising for me, the support that we had for a very, very limited remedy. I mean, we had no one stepping forward, even the residents along Blackwater Road saying we need to do more. And I guess that is the thing that is

most disheartening for me.

You know, I see us as being in a partnership with the Federal Government. And, as I said earlier, I found it very hard to get up and share with the citizens that we would support a remedy that EPA was proposing. Quite frankly, I had some council members that were ready to spend some money to go to court. And you know we have to deal with the world as it is, not as we would like it to be.

So community involvement, you know, I agree, is very, very im-

portant in this process. It is one way that we can improve it.

But I will share with you, though, at least in my cursory reading of H.R. 3800, I don't see—it is more of a feel-good thing. I really don't see much substance. My experience has been that unless they are involved in the decision-making, community participation is not going to last very long. I mean, if you are just bringing them there, passing out papers, that is not community participation.

Ms. Shepherd. Well, the way I read it, it is very early, and if the community chooses to get all fired up about it, it will make a huge difference. If they don't, they probably don't care. I mean, we both are having different experiences here. I have a community that cares passionately. You had one that didn't care very much.

Mr. Elliot. Well, they cared about the cost, excuse me.

You know, once again, we felt there was no risk there. There was no present risk. We live in the community. I live in the community. If there were risk to our drinking water, we wouldn't be waiting for Superfund. We would have done something many, many years ago instead of some over 10 years.

I mean, we have spent millions of dollars, nothing to show for it. Got a lot of paper. Twenty percent of the debt service that the city

pays has gone for Superfund, 20 percent.

I mean, we just went through a very difficult budget process where the school board was cutting out thousands of dollars for textbooks. We now have an activity fee for student activities, you know, but yet we are paying this money out for a project that people don't support. That is not good. We don't need that kind of ill will, and we should be working as a partnership.

And, once again, I want to harp back on we have got to focus on the cleanup goals, and we have got to have risk-driven remedies.

Ms. Shepherd. I guess I need you to clarify for me the 20 percent that you referred to. The city is paying?

Mr. Elliot. Twenty percent of our debt service payments out of the general fund go for bond payments that finance the RIFs and

other phases, other parts of the study phase.

You know, we just had the record of decision issued last month. Not one penny has gone for the cleanup, if you will. This is all money to study. And that is just not right. That is a shame. That is a national disgrace.

Ms. Shepherd. I understand that. Ms.—

Mr. APPLEGATE. May I say, Ms. Shepherd, that, yes, we have I think extended ourselves a little bit here. We want to try to get through the panel, and we still have a couple more Members yet to go. If you don't mind.

Ms. Shepherd. No.

Mr. APPLEGATE. At this time, we recognize the gentleman from

West Virginia, Mr. Rahall.

Let me mention to the two-thirds of the delegation that, which I am sure you are already aware, that the whole State of West Virginia is under a flash flood warning, so I am sure that you have been in touch. Don't want you to float away. You are attached to Ohio. Mr. Zeliff.

Mr. ZELIFF. Thank you, Mr. Chairman. I just would like to clarify two points.

I think Mr. Borski commented that aren't we worried about going from a private sector system that we now have under Superfund to a governmental system, and I think it is just the other way around. I think that the government is making the decisions now under the present Superfund law at considerable expense and inefficiency and waste, and under our bill it would be private sector driven. And I think that is what we are trying to do.

The other thing, relative to retroactive liability—and I would just like to read this into the record. With total NPL site cost estimates topping \$100 billion, over 90 percent of the NPL cleanup bill has yet to be spent. In light of that looming cost burden, past costs are minor by comparison. We are aware of no PRPs who are done with

Superfund.

More important, the relevant question should be, what works for Superfund? If we go back and look at fairness to PRPs, the assertion behind the claim is that we should continue to be unfair to the vast majority of PRPs to avoid treating them as badly as some

were for the past decade.

I think the thing here is that the relatively minor amount in terms of total number of people who have already cleaned up the sites, relative to retroactivity, and to make it a fairer process now, we have got the biggest part of the job yet to do. So I think one should be—the overwhelming concentration should be on, in my judgment, retroactivity.

I just have a couple quick questions and then—and I appreciate

your indulgence in extending very much.

Mrs. Young, on page 5 of your testimony you mentioned that both H.R. 3800 and H.R. 4161 of our bill addresses de micromis and de minimis parties. Could you elaborate on what the problems are and whether the bills go far enough in their solutions? Maybe in comparison.

Ms. Young. With respect to the two bills, the de micromis has an exemption, and, to be honest, I can't cite for you what the definitions are. But there are certain definitions built into both bills that I think are very similar in terms of eliminating parties that either basically generated municipal solid waste or had such a small amount of hazardous waste in their waste stream as really to be unfairly dragged into the process. So I support that.

The de minimis parties, I think both bills, again, try to strength-

en the de minimis provisions.

My concern remains—and I mentioned earlier, under the administration's bill, H.R. 3800, I don't know how a de minimis deal can be done in the very first beginnings of a case when you have to—as I understand it, within 18 months the EPA would have to make an offer to the de minimis parties. That would include premium and cash out. They have to make a cost estimate. And unless there is an expedited remedial decision made I don't know how a cost estimate can be made of what it is that you are going to be cleaning, you know, what you are going to be paying for.

So I have real concern about whether that de minimis transaction or provision is going to work as effectively as they say it might. I believe that they may introduce these parties early into the process and, in fact, exacerbate their transaction costs because

it will get dragged out well beyond the 18 months. Mr. ZELIFF. Anybody else want to comment?

Let me just ask you this. And this will be my last question.

With all the debate that you heard from the first panel, in coming down from New Hampshire and having worked with Superfund, all three of you, very intimately for several years—and you, Mrs. Young, I was telling the Chairman how many sites that you are involved with in terms of legal representation, and I think you know the law extremely well.

And did you find anything interesting in terms of previous debate relative to the solutions to Superfund? Is there anything in there particularly that scares you relative to the direction that we are heading? Anything that concerns you? Do you have a feeling that we are, other than retroactivity, are we going to really solve

the law and the flawed process that is going on?

You might just—you know, if there is something that just perked your ears—I mean, do you think we have a good handle on this thing relative to the questions that have been asked and the testi-

mony received or do you think that—

Ms. Young. My sense of it is that, as I said earlier, while H.R. 3800 would be a significant improvement over what the current program provides for, if it works as we all would hope it works, I think that we still are rearranging the deck chairs, if you will, to a certain extent, and we are going to continue to have significant transaction costs and fighting out the liability issues.

And I don't believe that the nonbinding allocation is going to work within the 18 months the way that it is supposed to work. So I have serious concerns about whether we are really going to effect what everybody wants to effect, which is to minimize or elimi-

nate transaction costs, and put the dollars into the cleanups.

Mr. ZELIFF. We, actually—under SARA, we tried to solve the problem, under CERCLA, and—in 1986, and we didn't do much then either, did we?

Ms. Young. No.

Mr. ZELIFF. And so we are now in a process where we are trying to do it again. We ought to just visit this thing and do it right once and for all and get it done.

I just want to thank you, Mr. Chairman. I appreciate the com-

mittee in giving us a chance to have a panel.

As is obvious, we have worked awfully hard on this issue. We think we have the right solution, but we know others think that they have the right solution. And, hopefully, the process that goes forward will be one that allows us to maybe change maybe the proposal that is moving forward. We certainly hope that we have that opportunity as we go through the committee process and on the Floor.

Thank you very much.

Mr. APPLEGATE. Let me ask you one question, Mr. Zeliff. Have you talked with anybody on the Ways and Means Committee? Because we obviously are not going to deal with a new broad-based tax. And, as you know, that new taxes, of course, create a fire storm of opposition. And, of course, particularly with your side of the political fence, because I think most of them have signed an oath against new taxes.

Mr. ZELIFF. Touche.

Mr. APPLEGATE. Yes. Right. Wanted to see how you were going

to get them on board.

Mr. ZELIFF. I see the guys from West Virginia are just kind of laughing over there. I don't really—and for the record, let me say that I voted against the nickel increase in the gas tax. I think that is also that my friends are reminding me of

is what my friends are reminding me of.

But that—we reluctantly looked at whether we double the environmental tax in this particular process of dealing with retroactivity. And I say reluctantly—we looked at the bigger picture, and the bigger picture is it that retroactivity is unAmerican, just not right. I just can't conceive that we would allow this to go forward with any kind of conscience.

Now—so then you have to back up and do some things that you don't want to do. And what I would rather prefer to call it, Mr.

Chairman, is a user fee, not a tax.

Mr. APPLEGATE. Except for those who already used it.

Mr. ZELIFF. For the benefit of my colleagues on my side of the aisle.

Mr. APPLEGATE. Okay, all right, I will accept that.

And I want to thank your panel. They were very, very good, very informative. And we appreciate your being here and your input into this. And we hope perhaps as we move on down the road in the next couple of weeks we will be able to use some of what you have given to us.

But we will certainly be working with Bill Zeliff. He is an outstanding Member of the committee, and as one of our new Mem-

bers we are very proud to have him here.

Ms. YOUNG. Thank you.

Mr. PHILLIPS. Thank you, Mr. Chairman.

Mr. APPLEGATE. If the next panel would please come up, panel number three: Larry Rose, Chairperson of Fayette County, West Virginia, for Concerned Citizens to Save Fayette County, and accompanied by Lucian Randall of Minden, WV. We do not have a Minden in Ohio, but we do have a Fayette County.

Mr. Rose. We thank you, Mr. Chairperson, for-

Mr. APPLEGATE. Now hold on a second now. That is okay. We will

get you seated down there first.

And, first of all, what we will do is I am going to recognize—of course, we have two of our very outstanding Members of this committee, West Virginians, two of which are chairmen of the subcommittees, and I think that says a great deal, in Bob Wise and Nick Rahall. And I believe at this time I am going to recognize Representative Rahall.

Mr. RAHALL. Thank you very much, Mr. Chairman. I appreciate your patience and dedication to addressing this issue by the hear-

ings that you have conducted the last over several days.

Mr. Chairman, by way of a brief introduction, Minden, WV, represents the pressing need to provide for a greater degree of environmental and social justice under the Superfund program. While not designated on the National Priority List, on three occasions the EPA engaged in PCB removal actions at the site of the Shaffer Equipment Company in Minden. Although EPA certified the site as a completed project in 1987, it had to conduct additional removal actions in 1989 and 1991. Each time, EPA initially stated the site was safe, and each time it had to return after affected citizens proved that the opposite was true.

Even after all of this, today the people of Minden continue to suffer from the terrible effects of PCB contamination. For its part, EPA once again is being forced to admit that there is a need for

further action at the site.

I am sure there are many Mindens, Mr. Chairman, throughout our country. There are many people like those who live in Minden who are burdened by the legacy of EPA's and the ATSDR's inept implementation of the Superfund program. In our view, it is incumbent upon us to force the necessary change in this program to address the pressing problems being faced by the people of the Mindens of this Nation.

I spoke of environmental and social justice a moment ago. Environmental justice, in this case, entails fashioning a Superfund response program that works, that will truly mitigate the threat posed to human health and safety from contaminates such as PCBs; and by social justice, I firmly believe that we cannot ignore

the human factor in the Superfund program.

Environmental restoration alone is not enough; we also have a responsibility to those who have been contaminated by the presence of hazardous substances in their communities. And for this reason, I support the Environmental Health Network's proposal to empower affected communities with an environmental health grant program under Superfund.

Mr. Chairman, it is my honor today to welcome to this subcommittee Mr. Lucian Randall, a resident of Minden, and a victim of EPA's and the ATSDR's failures at the Shaffer site. His story is one worth hearing as we consider the Superfund reauthorization bill.

It is also my honor to welcome Mr. Larry Rose, the Chairperson of the Concerned Citizens to Save Fayette County, the grassroots citizens group that has been unflagging in its efforts to obtain relief for the people of Minden.

I salute these gentleman for their efforts not only for the community, but for our State of West Virginia and indeed for all the

Mindens of this Nation, as I have referred to already.

Gentlemen, we welcome you to the subcommittee.

Mr. ROSE. Thank you.

Mr. APPLEGATE. Mr. Wise, did you wish to be recognized?

Mr. WISE. I think Representative Rahall stated it well. As one whose district has bordered Minden, I am well aware and have heard much, regrettably, that the problems in Minden I think are replicated in many other areas and they focus on the need for adequate cleanup, adequate community involvement.

Unfortunately, in West Virginia, we have got some more Mindens; they haven't been found yet, or let's say they haven't

been put on a list yet, but they are out there.

Thank you.

Mr. APPLEGATE. Thank you, gentlemen.

Mr. Rose

TESTIMONY OF LARRY ROSE, CHAIRPERSON, CONCERNED CITIZENS TO SAVE FAYETTE COUNTY, FAYETTE COUNTY, WV, ACCOMPANIED BY LUCIAN RANDALL, MINDEN, WV

Mr. Rose. Yes, sir, thank you, Mr. Chairperson, for allowing us to be here. And we want to definitely thank Congressman Rahall and chief staff person Jim Zoia for inviting Lucian and myself up here to testify today, because what we are going to hope to do is to make a case to make the EPA more responsive to the people that it is supposed to serve. I mean, that is the bottom line.

From Appalachia to Mississippi to Louisiana, to all over, you know, the poor areas of the South and the East and the West, the EPA has been very negligent in its duties. The EPA has really protected industry. They have not protected the people that they—you know, the intent, the mandate was to protect the people, not really

just to protect the industry.

The ATSDR in itself goes into communities, conducts health assessments, and then tells the communities that there is no problem and then they get out. And this causes even further problems for the people, because then the State and the county are more reluctant to take action to help the people's poor health due to the chemical contamination.

What I would like to do, if I may, is read my brief synopsis to you and then we are going to have Lucian tell his story. And Lucian, by the way, has 14 parts per billion of PCBs in his blood, and chloracne and other illnesses caused by PCBs. And I hope that, you know, our case that we state today is just not for Minden; but you know, I do want to say that Minden is dying.

But there are thousands of Mindens all over the country, but what is so sad, Mindens are basically found in poor communities in this Nation—and I will get into that in a second, that the per

capita income is only \$4,000 in Minden, WV. If this had been a richer, more wealthy neighborhood, community, I do not believe that a hundred people would be allowed to die and pass away and have their immune systems break down. I do not believe this is—this is not justice. This is not what America was supposed to be built on.

Please let me read my synopsis, and then let's move on. We will answer any questions that you would like, and Lucian will discuss

his situation.

The background, the people of Minden, WV, have been poisoned due to the careless waste disposal of PCBs by the Shaffer Equipment Company. Cleanup efforts started 15 years after the contamination began and never will be completed. The EPA just recently said that Minden would never be clean. It cannot be totally eradicated of PCBs and PCDFs, and they are planning now to try to seal the site. Of course, that is going to leave PCBs in people's bodies and throughout the community.

Minden is too contaminated, contaminated with PCBs, which are polychlorinated biphenyls; PCDFs, which are furans. When PCBs are burned, they actually are converted to PCDF, which is dioxin, Agent Orange. And I will get to the point that thousands of gallons

were burnt in Minden, WV.

The Shaffer Equipment Company is a small, family-owned business that bought used electrical equipment to be refurbished, primarily for the mining industry. Operations at Shaffer started in the early 1970s in a small community in the southern West Virginia area of Minden, and today Shaffer Equipment is bankrupt.

Minden is an old coal mining camp, made up of approximately 350 families. Minden and neighboring Rock Lick lie in the valley, in a valley in Fayette County, West Virginia, surrounded on three sides by mountains. Arbuckle Creek flows throughout Minden into the New River, where many people fish, and where we have some of the best whitewater rafting in southern West Virginia. This creek flows three—floods, excuse me, three to seven times a year. And I will guarantee you, if you went to Minden this evening, with West Virginia under a flood watch, there will be three feet, two to three feet of water in people's homes in Minden today, tonight, that are going to be going into their living rooms. Arbuckle Creek will rise, it will carry the PCBs further into their homes, into their yards. Arbuckle Creek was the main conduit how that the PCBs were distributed throughout Minden to begin with.

Minden, let's see—okay, I have lost my place; I am reaching back, excuse me. The per capita of Minden is only \$4,000 per year,

and very few people have access to health care.

The Shaffer Equipment Company sets along the banks of the Arbuckle Creek. During the boom operation of the 1970s, thousands of gallons of PCB-laden oils were spilled and poured on Shaffer's property. With the regular flooding of Arbuckle Creek, the contaminated soil was carried throughout people's yards, gardens, and into New River. The workers at the Shaffer site were forced to burn this oil in a wood-burning stove as a source of heat. Mr. Shaffer also gave the oil to residents that was burned inside their homes for heating fuel.

PCBs must be incinerated at very extremely high temperatures to be destroyed. When PCBs are burned, they break down to form an even more deadly chemical, which I have already mentioned, akin to dioxin, which is Agent Orange, and that is called PCDF. Smoke from these fires filtered throughout the communities of Minden, Rock Lick, and Oak Hill, which is the largest town in the

area on the entire plateau in Fayette County.

Another problem that faces the people of Minden is, the neighboring Oak Hill sewer treatment plant also sets along Arbuckle Creek. And for many years it has been overworked; it is really overloaded. It can't handle the amount of sewage being processed. Raw sewage dumps into Arbuckle Creek and the odor is sickening. It is highly contaminated and there are also leeches in Arbuckle Creek. We have warned the children to please stay out of Arbuckle Creek because of the PCBs, the E. coli and the leeches, but it is very hard to keep poor children, when they have very little to do and no playgrounds, not to play in the local creek. It is very hard to stop them from doing that.

Oak Hill town council members promised for more than 10 years to update the facility. In 1990, construction began and now has been completed, but the ATSDR states that Arbuckle Creek is still

contaminated heavily with E. coli.

In 1989, smoke was noted coming out of a hole in the ground right in the heart of Minden. The West Virginia Department of Energy was called in and at first said, the source of the smoke cannot be found. Residents feared an underground fire in one of the many coal seams that lie under Minden. The DOE's last word was, you know, there is nothing to worry about, even though they never pinpointed the problem. However, this action may in fact have created more PCDFs and more dioxin that the people have to live in.

I would also like to mention that the people of Minden have had Arbuckle Creek dredged by the Department of Natural Resources and that dredging, the sediment out of Arbuckle Creek, was placed on the dirt roads in Minden, throughout Minden, to fill up potholes, before the EPA came in. So the PCBs are spread everywhere. The DNR also gave this contaminated dirt to people to use in their

backyards for gardens.

The effects of what all this contamination is doing to these people that are suffering from all of these different illnesses, which I will describe—Minden residents are for the most part very poor and depend on government checks as their monthly income. Others work at minimum wage jobs. Both of these categories of individuals are either without adequate health care coverage or have no coverage at all. The fact is that some are faced with medicare

copayments that sometimes cannot be financially afforded.

Medicaid health care providers are not plentiful, and minimum wage jobs do not provide health care coverage. In addition, the health care problems of the residents are compounded by the fact that there are not physicians knowledgeable about the chemical effects. Furthermore, how can we expect physicians to become interested in learning about the chemical effects on humans when we have a Federal agency, the ATSDR, preparing inaccurate health assessments and stating to the local press that there are no health effects in Minden?

However, our group, Concerned Citizens, through our own studies—and we have had studies with Vanderbilt University, we had studies in 1986 with Vanderbilt University, we had a study with Virginia Tech in 1989, with West Virginia Tech in 1991; all show that Minden has high relation to PCB toxicity and PCB health problems.

[The information follows:]

RESTORING

THE PUBLIC HEALTH FOCUS OF SUPERFUND

EMPOWERING

CONTAMINATED

COMMUNITIES

WITH AN

ENVIRONMENTAL

HEALTH

GRANT

PROGRAM.

"From the outset of its efforts to address the problem of toxic chemicals, the Congress has been concerned by the likeihood that releases of hazardous substances, pollutants and contaminates into the environment pose a significant threat to public health..... In general, protection of human health is the highest and ultimate goal of the Nation's environmental laws . "

Superfund Amendment Reauthorization Act of 1986. (SARA)



Sequel to Inconclusive By Design by: Environmental Health Network

DEDICATION

The Environmental Health Network dedicates this report to Martha Bailey. Her struggle was the catalyst and inspiration For Inconclusive By Design and the investigation of ATSDR. She has relentlessly campaigned and advocated for health care in toxic-damaged communities. She has always been a pioneer in her quest for the truth and her desire to help injured people find the justice they deserve.

RESTORING THE PUBLIC HEALTH FOCUS OF SUPERFUND: EMPOWERING CONTAMINATED COMMUNITIES WITH AN ENVIRONMENTAL HEALTH GRANT PROGRAM

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Grassroots Committee for the Development of the Environmental Health Network's Environmental Health Empowerment Grants Proposal includes residents of:

Albuquerque, NM

Alsen, LA

Bloomington, IN

Buffalo, NY

Carver Terrace, TX

Chattanooga Creek, TN

Columbia, Mississippi

East Chicago, IL Hanford Nuclear Site

Kellogg, Idaho

Kellogg, Idan

Minden, WV

Oakville, LA

Pensacola, FL

Perry, FL

Pineville, WV

Stringfellow Acid Pits, CA

Tucson, AZ

Uniontown, OH

Winona, TX

Yukon, PA Oakridge Nuclear Site

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Nathan Cummings Foundation

FACT Charitable Trust

The Environmental Health Network is a national, nonprofit organization that provides technical support and organizing assistance to toxic-damaged communities and individuals. In addition, we educate professionals, including health care professionals, government officials, physicians and attorneys to recognize and assist victims of environmental disasters. EHN is dedicated to providing both immediate and long term assistance and to work for institutional environmental health reform. EHN is the only national environmental health organization that combines both environmental health education programs and national policy reform to make significant improvements in the quality of life of contaminated communities.

Additional copies of this report are available from EHN for \$7.00.

RESTORING THE PUBLIC HEALTH FOCUS OF SUPERFUND: EMPOWERING CONTAMINATED COMMUNITIES WITH AN ENVIRONMENTAL HEALTH GRANT PROGRAM

A Proposal of the Environmental Health Network

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RESTORING THE PUBLIC HEALTH FOCUS OF SUPERFUND: Empowering Contaminated Communities With An Environmental Health Grant Program

THE ENVIRONMENTAL HEALTH NETWORK

EXECUTIVE SUMMARY

Since its original enactment in 1980, the Superfund law has mandated that where communities suffer a "public health emergency," the federal Agency on Toxic Substances and Disease Registry (ATSDR) must provide certain health services including diagnostic testing and medical care. Though ATSDR has never provided such aid, many communities with Superfund sites suffer with exactly the kinds of public health crises that Congress intended to address.

Those communities need health testing and treatment programs such as blood and neurological tests, followed with periodic monitoring for the long term, to ensure early detection of illness. Specialized treatments are also needed, with treatment approaches ranging from avoidance of further toxic exposures, to traditional medicine, to an intensive regimen of exercise and saunas.

The most important factor in environmental medicine is having doctors available who are well-informed in detection and treatment of environmentally-induced illnesses. Most physicians lack such expertise. Specially trained physicians or standardized environmental health screening approaches are needed. But instead of receiving needed medical help, contaminated communities have been studied to death. As we reported in our previous study entitled *Inconclusive by Design*, the federal environmental health research establishment is neglecting the needs of contaminated communities, by relying largely on statistical study methods which are inevitably inconclusive for neighborhood-scale exposed populations.

Neither the Superfund law nor ATSDR have ever defined what kind of "public health emergency" triggers medical care. In fact, ATSDR officials have tried to deny that they have the authority and the budget to provide medical relief to communities in crisis. Now with the Superfund reauthorization EPA and ATSDR are taking a different and contradictory approach -- asking Congress to repeal ATSDR's authority to provide medical care, and to cut their budget by \$11 million.

Lest of Sapar- Please place the

We propose that instead of granting ATSDR'S request to retract the medical care mandate, ATSDR should be directed to use their existing authority to provide "environmental health empowerment grants" to allow contaminated communities to start up environmental health clinics. Such clinics would aid people whose health is affected by toxic, radioactive, or other exposures at Superfund and RCRA corrective action sites, including federal facilities. The clinics could save the government money over existing approaches since the startup costs of the clinics, as covered by the grant program, would be recoverable under Superfund. Specifically the clinics would provide:

- 1. A location for impacted populations to get specific diagnosis for health problems which may be associated with local toxic exposures, and treatment where such illnesses are identified.
- 2. Access to facilities for continuous and consistent environmental health diagnosis throughout the lifetime of an exposed individual. Ongoing care would also include consultations for reducing continuing health risks due to prior toxic exposures, including but not limited to appropriate dietary and lifestyle changes, measures for reducing continuing exposures to toxic chemicals, and other public health protection measures.
- 3. An archive to house the clinical data on patients with the types of health problems potentially associated with the toxic exposures.
- 4. Hands-on training of physicians and scientists in environmental medicine.

Some communities -- especially in poorer areas without any real local health care infrastructure, could use the grants to build new facilities to meet environmental health care needs. In contrast, communities which already have a substantial health care infrastructure might situate their new environmental health facility within an existing occupational health clinic, or hospital. Grant money would go toward paying for consulting physicians' time during startup and training, and for added equipment and administrative costs associated with treatment of environmental illnesses. Finally, other communities might use the funding for a periodic monitoring or treatment program, of one or more days per week or per year.

In any of these instances, the clinics would be required to become selfsustaining businesses -- sustained ultimately by normal sources of health care funding such as insurance, Medicaid, Medicare, sliding scale payments or

(2) Exactive Summing

private cost recoveries from PRP's. Special allowance would be made for low income patients who fall through the cracks of existing health care safety net programs, through a local voucher system funded within each grant. The clinics would be designed to mesh with any national health care system that eventually emerges, but would be in place to meet communities' needs long before such federal system will take effect.

As this paper went to press, it was uncertain whether the Congress would reauthorize Superfund in 1994. Therefore, we address the urgently needed creation of our proactive health care program through two different approaches:

(1) BUDGET APPROPRIATIONS: USING EXISTING ATSDR AUTHORITY The following language would be enacted in the appropriations bill:

\$22 million is appropriated for the establishment of community-based environmental health clinics to provide diagnostic services, specialized treatment, health data registries and preventative public health education in communities with unmet public health needs due to releases of hazardous substances, under cooperative agreements between ATSDR and state or local governments pursuant to 42 U.S.C. 9604(i)(15), with oversight by the local affected public.

(2) REAUTHORIZATION: AMENDING THE SUPERFUND LAW A \$50 million per year grant program would be established, to be governed by a new Commission on Environmental Health Empowerment. First year grants of up to \$2 million per community would be made available under the program. Communities receiving the demonstration grants should be eligible for subsequent renewal grants of \$1 million per year for up to five years. The Commission would be required to fund at least 10 new projects per year, selecting from eligible applicants. The scope of the grant would depend on the type of problems present in the community. The decision to provide a grant would be within the sole jurisdiction of the Commission. Liability and Superfund provisions would both cover the grants.

Our report concludes with additional recommendations for amendments to Superfund regarding ATSDR and public health. Superfund has been the law of the land since 1980, and since that time the protection of public health has been a prime objective. Yet health protection has also been the law's most ignored goal. To paraphrase a recent Presidential campaign, the time has come to "put people first" by finally addressing the missing element of the Superfund program.

(3) Executive summary

Public Health Expenditures of the Agency on Toxic Substances and Disease Registry (ATSDR)

Environmental Health Clinics

Public Health Education

Health Studies and Surveillance

Consultations

The Environmental Health Network's appropriations proposal would restore the ATSDR budget to its fiscal 1994 level, and allocate \$22 million to start community environmental health clinics. The clinics would function as health care businesses, emphasizing diagnostic services, long term monitoring and specialized health care.

ATSDR has refused to provide such services despite its legal mandate to do so. Many objectives of existing ATSDR programs (e.g. health surveillance and public education) will be better served through this locally-based approach.

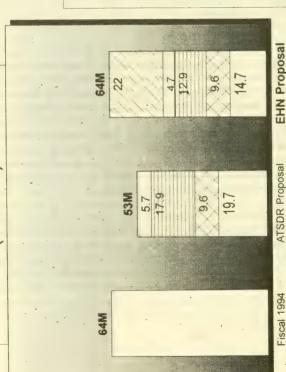
Appropriation

Appropriation

ATSDR Budget Obligation

Fiscal 1995 Budget

Fiscal 1995 Budget



RESTORING THE PUBLIC HEALTH FOCUS OF SUPERFUND: EMPOWERING CONTAMINATED COMMUNITIES WITH AN ENVIRONMENTAL HEALTH GRANT PROGRAM

The Environmental Health Network

[1] n cases of public health emergencies caused or believed to be caused by exposure to toxic substances, [the Administrator of the Agency on Toxic Substances and Disease Registry shall] provide medical care and testing to exposed individuals... CERCLA §104(i)(1)(D).

AN ENVIRONMENTAL HEALTH CRISIS THAT CALLS FOR SPECIALIZED HEALTH CARE FOR CONTAMINATED COMMUNITIES

An overriding goal of Superfund is the protection of human health. Yet a health crisis exists for people exposed to pollution sites, one which has never been redressed by the agency charged by law with meeting their medical needs.

Many of the communities with Superfund sites have the kind of public health emergency that Congress intended to address when it created Superfund. For example:

In Oak Ridge, Tennessee, data show massive health risks in working or living in or near the local nuclear weapons complex. Cancer rates are the highest in Tennessee and are six times the national average. Rheumatoid arthritis and similar collagen-vascular disorders are high. There is suspicion other medical disorders are unusually high as well, including dementia, Lou Gehrig's disease, Parkinsonism, multiple sclerosis, birth defects and bone disorders. At present the medical support infrastructure is inadequate to provide diagnosis or treatment, or to map the locations of disease occurrences against the pollution source.

Minden, West Virginia, an old mining community that was contaminated with PCB's, has suffered under a shadow of poverty and contamination for the last 20 years. During the 1980's studies showed an excess of cancer, miscarriages and other diseases. Many have died, and many who still live have chronic health problems and no one to turn to get consistent medical care except one brave doctor who takes many of these individuals as charity cases. The numbers far out-stretch his capacity. Despite the millions spent for assessing and testing health in the community, no funding has gone for health care. The site cannot be cleaned up and populations are continuing to be exposed. The community has asked for relocation and health assistance, which would cost far less than the continued open-ended remediation effort, and would go a long way to reduce anger and resistance from the community.

In <u>Pensacola, Florida</u> EPA intervened due their determination of an immediate threat to the surrounding population. They disturbed age-old dioxin laden soils without giving full and

proper warning to the surrounding community. In the emergency removal they dug up the dirt, putting it in a pile and leaving it to blow around and contaminate the community. The people who lived near the site complained of terrible odors, breathing problems and in some cases life-threatening incidents that sent many elderly residents to the hospital (some of whom died). Although EPA has acknowledged this site as an emergency, nothing has been done to protect the people. ATSDR has only proposed spending millions to study the problem, in a study design already reviewed by experts and found to be inevitably inconclusive. EPA is proposing spending millions more trying to clean up something that cannot be cleaned up. The money would be better spent on relocation or toward a local environmental health clinic.

In <u>Kellogg, Idaho</u> generations of residents have been harmed by exposure to twenty-one square miles of lead and heavy metal slag and wastes from an old mining site, the largest lead superfund site in the nation. During the 1970's children were found to have the highest documented levels of lead ever recorded. The county has a higher portion of children needing special education programs than any other county in Idaho, as well as a significant increase in certain cancers and in heart attacks. While millions of dollars have been spent by state and federal agencies on attempted cleanup programs, the community has enormous unmet health needs.¹

Some health programs have been conducted but these have been patchy. Principally, ATSDR and CDC have done annual blood testing of children under nine years of age for lead. The program has several serious problems. First, older children, who are not tested under the program, would be at more risk of longer and higher exposure levels and likely accumulation of lead in the brain, bones and tissues. Second, lead poses much more of a danger to body systems after it has reached those target organs and blood tests do not adequately detect this exposure. Third, many parents in the area whose annual income is about \$5,000 a year and who lack health insurance cannot afford to go to doctors after receiving a letter stating that their child has high blood levels of lead. Finally, even when people do get to doctors, most local doctors have little knowledge about what to do about lead exposures.

The community has been seeking to establish a trust fund to set up a clinic to treat those whose health is damaged. ATSDR and EPA have denied this request and in fact ATSDR officials lied to the community by saying that they cannot legally support a clinic. When confronted with their own statutory language which allows such health care, they took the position that the people already had adequate local health care provided. ATSDR has received hundreds of letters from local residents telling them of the need for the clinic to better address the local health needs.

¹ Remediation programs in this community are of questionable utility. One program on yard remediation was supposed to eliminate the transference of lead and other metals into homes of the People of the Silver Valley. But EPA's own study shows this program was not effective in stopping the routes of exposure and reducing lead levels in children. Citizens have been asking for relocation of those who want to leave since it seems impossible to thoroughly clean up the 21 square mile area.

INSTEAD OF HEALTH CARE, STUDYING COMMUNITIES TO DEATH

Instead of receiving medical help for these needs, communities are literally being studied to death. As we reported in our previous study, <u>Inconclusive by Design</u>, the entire approach and orientation of the federal environmental health research establishment is not serving local communities. Our report documented that federal environmental health agencies have made a priority of public reassurance rather than public health protection. We uncovered a whole series of distortions in investigative techniques, which together merit the label "inconclusive by design" for the entire program of federal environmental health research. Among the factors which block the usefulness of the studies were:

- Excessive reliance upon statistical study methods which are necessarily inconclusive due to the limits of statistical methods applied to small, neighborhood-scale exposed populations;

 ATSDR has a manda
- Inadequate contact with populations being studied, including refusals to study to sickest populations in the relevant communities;
- Reliance upon testing techniques entirely inappropriate to the type of exposure involved;
- Contracting with researchers known to be biased against finding any connection between pollution and diseases; and
- ATSDR has a mandate to provide health testing and health care to contaminated communities. But instead the agency has mostly conducted statistical studies that are useless to those studied.

Studying the wrong types of illnesses (e.g. focusing on death studies where health problems reported were generally nonlethal, such as respiratory illnesses or reproductive problems).

The net result of these flaws in the federal environmental health approach is that communities who are in crisis -- who need real help -- do not get it. When government misleadingly declares that it can find no identifiable health impacts in the community, public complacency often sets in, followed by a halt to government intervention to protect health. This has occurred even at many sites where sound public health policy would merit added precautions to reduce future toxic exposures and medical monitoring or medical care of people already exposed. In effect ATSDR has been protecting the polluters more than the exposed communities, since under Superfund and liability laws the polluters could be required to pay for any such precautions.

HEALTH CARE NEEDS OF EXPOSED COMMUNITIES: DIAGNOSTIC TESTING, DATA GATHERING, SPECIALIZED TREATMENT AND PREVENTIVE PUBLIC HEALTH EDUCATION

The environmental health care gap in many toxic-exposed communities is vast, and worsens the damage caused by the toxic releases themselves. Poor communities and communities of color, both of which have a disproportionate number of contaminated sites, typically lack the facilities and economic ability to secure appropriate health care. Even in communities which have health care facilities, there is a lack of properly trained medical personnel to look for illnesses that may be due to environmental causes. The lack of a central location for diagnosis of environmental health harms means that the potentially useful data on environmental illness is not aggregated, but rather is lost among the many health care providers in the community.

In many communities, toxic exposures necessitate special diagnostic tests. The type of health tests that should be done varies enormously depending on the type of chemicals, the duration of the exposure and the length of time from last exposure. Typical testing needs include blood testing, neurological testing and physical tests followed with periodic medical monitoring of the population for the long term, to ensure early detection of illness. Some tests such as urine and hair analysis are useful for certain exposures but limited in what they can reveal. Fat tissue testing is invasive and painful, and best reserved for certain instances where there were long term exposures to some fat soluble chemicals. Blood testing can range from looking for certain chemicals in the blood to doing immune and biological marker testing. Neurological testing can be done with a combination of physicals, PET scans, MRI and EEG's. Other types of tests, such as bone florescence testing, are experimental but should be considered for lead exposures especially in children. If the expertise or facilities to conduct such monitoring is lacking, diseases will be detected too late for effective medical intervention.

Specialized treatments are also needed for exposed communities. Treatments can vary as widely from avoidance of continued toxic exposures, to traditional medicine, to a regimen of exercise and saunas.² The need to exercise selectivity in treatment is demonstrated by chelation, a remedy which has been known to be helpful with lead exposure and some other heavy metals, but may be inappropriate for mercury exposures.

A critical factor in any such treatments is doctors who are well-informed in the literature and experience of treatment for environmentally induced illnesses. Most physicians lack the needed expertise. Therefore, specially trained physicians and/or standardized screening programs are needed in exposed communities.

There is also a need in exposed communities for a single location where data regarding symptoms and illness related to exposures can be compiled, and for public health education to

² Schnare, D.W., et. al, "Body Burden Reductions of PCB's, PBBs and Chlorinated Pesticides in Human Subjects," *Ambio* Vol. 13 No. 5-6, p. 378.

encourage reduced toxic exposures and other measures to alleviate risk factors in exposed populations.

ATSDR DENIES ITS MANDATE TO PROVIDE PROACTIVE HEALTH RELIEF TO COMMUNITIES AT RISK

Since its original enactment in 1980, the Superfund law has provided that where communities suffer a "public health emergency," the federal Agency on Toxic Substances and Disease

Registry is required to provide certain health services including diagnostic testing and medical care. Unfortunately, neither the Superfund law nor ATSDR have ever formally defined a "public health emergency" that would trigger medical care. More importantly, despite the cries for help from countless communities in crisis, ATSDR and CDC have never declared any such public health emergency to exist, therefore, from the agency's perspective, never officially triggering the provision of health services required by the Act.

Direct proactive health care assistance has been avoided by ATSDR at all costs, even where obvious health needs have been created by toxic exposures and the costs of addressing the needs would be less than or equal to the cost of conducting necessarily inconclusive studies. ATSDR has told local communities that it did not have the authority to provide health services. When communities identified the authority in the law, the agency claimed it could

ATSDR officials have told the affected public that the agency lacked the authority or budget to provide health care to contaminated communities. Now ATSDR and EPA are asking Congress to revoke the ATSDR mandate to provide medical care, and to reduce the ATSDR budget by \$11 million below fiscal 1994 levels.

not afford to provide such relief. But at the same time the agency was telling Congress, through the EPA, that it didn't need the money Congress had determined it should spend! ATSDR's annual budget requests submitted through EPA have been below the minimum floor specified in CERCLA for fiscal years 1990 - 1993. The law specified that a minimum of \$60 million be expended by ATSDR during those years. Section 111(m), 42 U.S.C 9611. But instead the budget requests for that period have been as much as \$10 million below that minimum. This is money which should have been going to meet local health care demands from toxic sites.

Now, in the ultimate insult to the local communities in need of environmental health relief, ATSDR is requesting that Congress repeal its authority to provide direct medical care to local communities. In its submittal regarding the Superfund reauthorization, ATSDR has requested that 42 U.S.C. sec. 9604(i)(1)(D) should be amended to omit medical care, and stated that

"If an emergency were declared, ATSDR does not have staff or facilities to directly deliver medical care and testing. Since the care would have to be delivered at, or near, the scene of the emergency, the only alternative would be for ATSDR to pay for such care. The agency has no mechanisms to determine the appropriateness of health care delivery and is not a provider or insurer. In those case where ATSDR has been approached to provide medical care, it has taken the position that care cannot be provided without a declaration of emergency. This reasoning has proven to be adequate thus far, however the Agency remains vulnerable to legal action."

In ATSDR's recommendation to eliminate this authority, they shamelessly confess that the change "would have no impact on potential beneficiaries as ATSDR is not currently providing, nor have they ever provided, medical care."

A PROPOSAL FOR ESTABLISHING COMMUNITY ENVIRONMENTAL HEALTH CLINICS THROUGH SUPERFUND

The existing ATSDR policies -- health assessments, studies, and limited monitoring -- have failed to provide communities with effective public health assistance. ATSDR must be cleared of bureaucrats who resist meeting the Congressional mandate to aid local communities, and a proactive health assistance program should be commenced immediately.

We propose replacing some of the current federal and state environmental health policies with a proactive health intervention program through grants to affected communities. Our program would empower impacted communities to start their own environmental health clinics. Such clinics would address needs of people experiencing health problems of the type that may be related to local toxic, radioactive, or other exposures at Superfund sites and RCRA corrective action sites, including also federal facilities and emergency removal sites. The clinics would provide expert help with diagnosis, treatment and the collecting and analysis of generated clinical health data. They would save the government money over existing approaches, restore trust in government, and help to prevent disease, birth defects and premature death. In contrast to the inconclusive studies conducted by the federal and state agencies, the clinics would engage in:

- Diagnostic testing of local residents for diseases and symptoms which are known to result from the kinds of toxics that communities are exposed to;
- Long term monitoring of the health of residents to detect longer term (chronic) health harms and in particular, to detect latent harms (such as cancer) early enough to allow interventions to save lives.
- Accumulation of data in a centralized diagnostic and monitoring effort to allow long term evaluation of the health impacts of toxic exposures on the community.

- Treatments for categories of illnesses that are most likely due to the exposures, and referrals to other physicians and specialists for any other illnesses that are identified in the course of evaluating people
- Public health education regarding measures to reduce public exposures and risk factors.

Responsible public health experts agree that government should never wait for conclusive results to provide proactive health protection to an exposed community. The National Commission on Superfund, established by the Vermont School of Law and the Keystone Center to evaluate recommendations for the reauthorization, recognized this need for proactive

health care. It recommended certain reforms in ATSDR's program, and that the next Superfund reauthorization establish a grant program for community health demonstration projects. The grant program would provide \$50 million a year for diagnostic health physicals and tests, primary medical care for needs potentially related to exposure from Superfund sites, and referrals to other health care services when diagnosis warrants. (See Appendix 3 for full text of the Superfund Commission's demonstration grants program proposal.)

We believe additional details are needed to spell out what would go into such demonstration projects. Specifically we are recommending that demonstration projects be supported where they involve some combination of the following four types of services: A community environmental health clinic under our program would provide diagnostic testing, long term health monitoring, specialized treatment and public health education for physicians and the community.

1. A location for impacted populations to get specific diagnosis for health problems which may be associated with local toxic exposures, and treatment where such illnesses are identified. The clinics would be staffed with physicians trained in the diagnosis and treatment of environmental illness. These doctors would provide appropriate types of testing, and communicate with the other experts in clinics and hospitals across the U.S. who are doing pioneering work in this field. The practicing physicians would be interviewed and chosen by the local oversight board in consultation with other experts. As part of this service, there would be a standard intake questionnaire to ask patients about their health problems in order to begin diagnosis. This questionnaire would be established nationally by experts in the field of environmental health. There would be a standard protocol for examining patients for neurotoxicity, immunotoxicity, etc...with flexibility built in for the attending physician to make other diagnostic decisions. The correct and thorough diagnosis of a patient is the most important part of such a clinic. In general, once a patient is diagnosed, other facilities would

help with the treatment and continued follow up of the disease, i.e., cancer, respiratory problems and others. Treatment provided specifically by the clinic under the grant program would be limited to treatments for illnesses categorically linked to the toxic exposures; however, the clinic might use insurance funding or other sources to provide more general treatment of the affected community.

- 2. Continuous and consistent health diagnosis and treatment throughout the lifetime of an exposed individual. This would include state of the art diagnostic evaluation for illnesses of a type known to be caused by the exposures. The federal and state governments consider followup in a community that they know is experiencing health problems to be a once a year check up or blood test, limited to only a few communities. This type of program is costing the taxpayer millions of dollars with no actual health benefit for the affected populations. The money that is being spent on these ineffective programs can instead by put toward health care by a physician that individuals trust and can be seen on a consistent basis. This ongoing care would include an educational and public health protection component, providing advice and consultations for reducing continuing health risks due to prior toxic exposures, including but not limited to appropriate dietary and lifestyle changes, measures for reducing continuing exposures to toxic chemicals, and other public health protection measures.
- 3. The clinics would act as an archive to house the clinical data on patients with the types of health problems potentially associated with the toxic exposures. When the federal and state governments currently study a community, they examine immediate, not generational health problems. They conduct a study within a six month or one year study period, generally only considering the health of people who presently reside in the community. They use epidemiology --- a statistical science which does not work when brought to bear on the small populations involved at the sites and in attempting to extrapolate from exposures and chemicals which are lacking in sufficient data. The clinical data generated by the clinics could help to change the face of environmental health science if it were used along with anecdotal, laboratory, or statistical analysis. This data would be generated partly as a result of actual diagnosis and treatment of people in the community. The scientists who analyze this data would be chosen by the local oversight board and all compiled statistical data would be for the use of community and the individuals in that community. The compiled statistical information would be public record and results could be published in medical journals, while individual medical record privacy would remain fully protected.
- 4. The clinics would provide hands-on training for physicians and scientists who wish to be trained in environmental health science. The National Academy of Sciences has reported that 95% of all physicians have not been trained in environmental health problems. Most medical schools have only one hour of training in environmental health. Communities find that most local physicians are impediments to people trying to get help. These clinics would provide valuable hands-on training for medical students and practical training for practicing physicians who want to expand their expertise. This would also help with the wise use of resources and personnel needed to make these clinics financially self-sufficient.

Clinics' Infrastructure Should Vary With A Community's Needs

Some communities already have a substantial health care infrastructure, which would make it unnecessary, for instance, to build a new facility for purposes of meeting environmental health needs. In such communities, the environmental health facility might be situated within an existing occupational health clinic, or hospital Grant money could help to pay for initial time of consulting physicians, and for added equipment and administrative costs associated with treatment of environmental illnesses

Some communities -- especially in poorer areas without any real local health care infrastructure, might need to use the money to build a new facility. Where no existing infrastructure is suitable, communities would be able to use the money for construction of such a facility. Finally, some communities might conclude that what is needed is a periodic monitoring or treatment program, of one or more days per week or per year.

In any of these instances, the clinics would become self-sustaining businesses by using insurance, Medicaid, Medicare, sliding scale payments for patients or private cost recoveries from PRP's. Part of grant monies would also be available for aiding low income

Community environmental health clinics initiated under our proposal will be self-sustaining businesses, structured to mesh easily with any future national health care program.

patients who fall through existing safety net and insurance programs, through a voucher system to allow them to receive services at the clinic. In all instances, the clinics would be established in a manner that can readily mesh with any future national health care program.

SUPERFUND REAUTHORIZATION OR APPROPRIATIONS PROCESS: A TWO PART PROPOSAL

As this paper goes to press, it is uncertain whether the U.S. Congress would reauthorize Superfund. Thus, below, we address the urgently needed creation of our proactive health care program through two different approaches: (1) the appropriations process using existing ATSDR authority; (2) the reauthorization, adding new language to the Superfund law.

Policies for the Appropriations Process

Even if Congress fails to act on the reauthorization, it can address the issue of proactive health care immediately through the appropriations process. Until the full reauthorization is established with the \$50 million program defined by the Superfund Commission (and detailed later in this report), we recommend that Congress earmark some startup monies, a total of \$22 million of the ATSDR budget, for ATSDR to finally implement the health services mandated under the Act

In the program we describe below using ATSDR's existing authority, Congress would restore ATSDR's budget to the \$64 million level of fiscal 1994 from the current proposal to reduce the ATSDR budget to \$53 million, and redirect an additional \$11 million of the overall ATSDR budget into the startup of environmental health clinics. We believe that the time has come to take these service needs out of ATSDR's sole jurisdiction, and put them jointly into the hands of those who are directly affected and those who have the exposed population's best interests at heart. Most of the costs of our proposed program would be recoverable through the existing cost recovery provisions of Superfund, so that the net effect of our proposal on the treasury could be a gain rather than a loss

ATSDR Could Establish the Program with Its Existing Authority

In implementing the grant program we propose, ATSDR can rely upon its existing authority. ATSDR's existing authority to establish the clinics is detailed in Appendix 1. In brief, it is clear that ATSDR has a duty to provide medical care and testing to exposed individuals in cases of public health emergencies from exposure to toxic substances, such as tissue sampling, chromosomal testing or any other assistance appropriate under the circumstances. §104(i)(1)(D). In addition the agency has a specific responsibility "where the administrator has determined that there is a significant increased risk of adverse health effects in humans from exposure" to a release of hazardous substances, to initiate a health surveillance program to include, at a minimum, periodic medical testing and health referrals of individuals screened positive for diseases. ATSDR is required by section 104(i)(5) of CERCLA to initiate research programs on the health effects of hazardous substances to include the collection of human data, whenever there is "a possibility of obtaining human data." ATSDR is also required to provide training and educational materials on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances. ATSDR has the authority to enter cooperative agreements (i.e. provide grants or contract for services) with states and political subdivisions to implement its various duties. Under the existing Superfund law, the cost of most of the above-specified services, as well as some additional costs of the local environmental health clinic to its operators, can be recovered from responsible parties and also drawn from the Superfund.

Recommended Language for an Appropriations Bill

We recommend establishing the program we describe through an appropriations bill provision which specifies:

\$22 million is appropriated for the establishment of community-based environmental health clinics to provide diagnostic services, specialized treatment, health data registries and preventative public health education in communities with unmet public health needs due to releases of hazardous substances, under cooperative agreements between ATSDR and state or local governments pursuant to 42 U.S.C. 9604(i)(15), with oversight by the local affected public.

This \$22 million would include \$11 million restored from the 1994 fiscal budget (restoring the total ATSDR budget from \$53 million to \$64 million) and \$11 million which can be taken from ATSDR's overall budget in the following manner to go toward meeting these same needs through the clinics:

- \$5 million from surveillance and health studies
- \$5 million from health assessment and consultations
- \$1 million from health education

In Appendix 4 of this report we include our recommendations for steps ATSDR should take to implement the program in the event that these appropriations are made by Congress.

Policies for the Superfund Reauthorization

Establish Commission on Environmental Health Empowerment. A Commission on Environmental Health Empowerment should be established, to distribute \$50 million in annual grants. The Commission should be an inter-agency, multi-disciplinary panel which includes representatives from appropriate health and other agencies, health professionals, and representatives of communities affected by hazardous substance sites. Its responsibilities would be to select appropriate projects for funding, provide assistance and ongoing oversight in implementing proposals.

Grants of up to \$2 million per community. First year grants of up to \$2 million per community should be made available under the program. Communities receiving the demonstration grants should be eligible for subsequent renewal grants of \$1 million per year for up to five years.

Applications for Environmental Health Empowerment Grants. The Commission should be required to fund at least 10 new projects per year, selecting from eligible applicants. Eligible applicants should include public (governmental) agencies or private institutions which have established an oversight board to receive the monies and oversee the clinic, comprised of people potentially affected by a Superfund or RCRA corrective action site (including federal facilities and emergency removal sites). The board should include at least six people who live within the exposure zone of the facility, four experts chosen by the exposure zone residents who may include outside experts as well as local attending physicians, one local government representative, one state government representative, and one federal government representative. The local board would make policy decisions regarding the operations of the clinic such as services to be provided, and decisions as to the hiring of treating physicians. All board members should be independent, financially and otherwise, of any PRP's at the site.

The scope of the grant -- whether it covers only health surveillance, or also direct medical care services -- would depend on the type of problems presented in the community. Medical surveillance funding for diagnostic testing and other health monitoring, local health registry and preventative public health education (and referrals to other medical personnel for

treatment where necessary) would be available where the Commission finds a reasonable likelihood of a potentially toxic exposure for a segment of the public. In addition, services under a grant could also include direct medical care where the applicant demonstrated to the Commission that:

- (1) The community suffers environmental health care needs due to:
 - (a) A release of a hazardous substance from a Superfund site (including emergency removal sites and federal facilities as well as other listed sites) or RCRA corrective action sites in which human exposure is likely to have occurred via one or more environmental pathways;
 - (b) Exposure to the identified chemicals is known to pose potential acute, chronic or latent health effects to exposed individuals or to the future children of exposed individuals; and
- (2) It would be medically beneficial to exposed individuals to undergo specialized interventions which could provide particular types of treatments which would not otherwise be available to some residents.

The decision to provide a grant should be within the sole jurisdiction of the Commission and not subject to veto by EPA or ATSDR.

The Commission should also be required to review past health studies and health assessments by ATSDR and identify instances in which faulty studies have worsened local public health crises. The Commission should recommend corrective measures to be taken in those communities, including the provision of environmental health empowerment grants where appropriate.

The liability provision of CERCLA, section 107(a)(D), and the Superfund provision (section 111) should both be amended to clarify full coverage of the grants. A provision should be established to require cost recoveries pursued by the Department of Justice to include recovery on behalf of local communities of other clinic costs incurred in excess of the grant program.

Each clinic should be required to undergo an annual financial and personnel audit by the Commission. The law should specify that the establishment and operation of environmental health clinics as provided under the grant program is not subject to being enjoined by litigation by potentially responsible parties. The establishment of the program should not limit other rights to judicial or administrative recourse that the local exposed population may have available. (Notably though, in practice it may reduce the extent of private litigation, as exposed populations would not have to sue to meet their basic medical monitoring needs.)

Applications for grants should be accepted at any time after-designation of the site as a Superfund (NPL) or RCRA corrective action site, or a site of remediation for a federal facility, or in special cases of an emergency declared by federal, state or local public health officials. Applications should continue to be accepted after a ROD or remediation is completed at a site. However, to ensure that the program does not impede settlement of litigation under Superfund, no cost recovery using the liability provisions of CERCLA should be available after a final settlement between responsible parties and the government, unless previously unavailable evidence demonstrates the need for health monitoring or treatment. Local residents would have standing to participate equally with government and PRP's in settlement proceedings on the question of health monitoring or treatment.

The proposed program could cut costs to the federal treasury and the taxpayers

Our proposal is consistent with the precautionary public health notion of providing relief to communities with demonstrated public health needs, but it would also be responsible fiscally - avoiding an entitlement approach and instead limiting the assistance to grants to selected communities with demonstrated health risks and needs.

Using the federal grant program, communities could launch clinics which might become entirely or largely self-sufficient, relying ultimately upon insurance recoveries to pay for the health care and diagnostic services. Moreover, under our proposal the costs of establishing these clinics would be recoverable from responsible parties as part of the government's overall cost recovery effort. A part of the budget which is today expended largely without cost recovery would be replaced with locally-operated clinics for which the federal startup costs would be recovered through Superfund liability

ADDITIONAL ENVIRONMENTAL HEALTH RECOMMENDATIONS FOR THE SUPERFUND REAUTHORIZATION

Place primary emphasis on a precautionary approach to environmental health including role in remediation design. The primary role of federal environmental health agencies should be refocused from conducting studies to identifying situations in which additional precautionary measures are needed to reduce public exposure to toxic substances. To protect the public during remediation, a reformed and independent ATSDR should play a strengthened role in overseeing remediation, from timing, to design, to execution and completion.

Specify the use of susceptible population for standards in remediation. All threshold limits for exposure and remediation should be based on potential exposure of susceptible populations, including the young, old and other vulnerable populations, rather than on other standards which address "average" populations.

Restructure or eliminate the environmental health role of Centers for Disease Control. Congress should eliminate CDC's Center for Environmental Health. This Center has been

biased against community environmental concerns from the outset. There is little reason to believe that this agency can do its job credibly. It should be eliminated, and the government should save the money which is wasted on its budget.

Curtail federal funding of studies which are inconclusive by design. Reduce funding for epidemiological studies; instead, provide more direct diagnostic testing and proactive health care (i.e., clinics) to collect clinical data as provided in this report.

Establish health technical assistance grants. Congress should enact Health Technical Assistance Grants (H-TAGs) and give community groups the right to receive such grants at all National Priority List sites and all sites at which health assessments have been performed. These grants should be utilized by the community to hire independent experts to develop a holistic health intervention plan for the community, and where appropriate, to prepare an application for an environmental health empowerment grant. The grants should allow local residents to seek a second opinion on environmental health matters -- i.e. to review health assessments and to ascertain whether to seek further health studies. These grants should be available prior to any decision to conduct a health study in the community --- to aid in determining whether such a study should be performed. A citizens group which has received a TAG grant from the EPA should be entitled to use pre-existing documentation to avoid replicating their initial approval process. No local matching funds should be required to be provided under the H-TAG program. Any physician, toxicologist, or public health expert with professional environmental health credentials should be allowed to advise the grantee. In other words, ATSDR should not be allowed to use political criteria to reject residents' choice of experts.

Overhaul health assessment and health studies procedures; end abuse of statistical epidemiological studies. Health assessment and health studies processes must be overhauled. The fundamental direction of such studies should be to aid EPA and local communities in applying precautionary principles to end potentially harmful exposures. The local community's right to veto the undertaking of health studies should be specified explicitly in the federal legislation. The system of studying communities should be overhauled by putting proactive health intervention in place and collecting clinical data with oversight from citizens. Experts utilized in any assessments or studies should be thoroughly scrutinized for biases and their public reputations; private universities and experts should be added to the pool of experts available for such studies.

End environmental health illiteracy. Environment health education under ATSDR's mandate should be expanded. Congress should establish a community environmental health training program funded by ATSDR and conducted by universities and by public health advocacy institutions. The purpose of the training should be to educate communities on health hazards presented by hazardous substances, the federal and state environmental health programs and studies, and on strategies for local problem solving. The law should require all medical and public health students and professionals to receive training in environmental health.

CONCLUSION

Our nation has had 14 years of Superfund, with public health protection as a leading objective. Yet the policies effectuated under our law are unresponsive to the needs of contaminated communities. The damage to health and quality of life inflicted upon our communities has never been addressed by the responsible agencies. The time has come for a program to allow local communities to meet these needs themselves.



APPENDIX 1 EXISTING ATSDR AUTHORITY TO ESTABLISH HEALTH CLINICS

In implementing the grant program we propose, ATSDR can rely upon its existing authority. Thus the program can be established through the appropriations process.

1. Duties to Provide Health Care, Health Surveillance and Local Registries

ATSDR is required to provide medical care and testing to exposed individuals in cases of public health emergencies caused or believed to be caused by exposure to toxic substances, including, but not limited to tissue sampling, chromosomal testing where appropriate, epidemiological studies, or any other assistance appropriate under the circumstances. CERCLA §104(i)(1)(D). The proposed clinics would provide the listed services and other assistance.

In addition to the agency's mandate for direct medical care, it also has a specific responsibility "where the administrator...has determined that there is a significant increased risk of adverse health effects in humans from exposure" to a release of hazardous substances, to initiate a health surveillance program for the population. Such a program is required by CERCLA §104(i)(9) to include, at a minimum.

- (A) periodic medical testing where appropriate of population subgroups to screen for diseases for which the population or subgroup is at significant increased risk; and
- (B) a mechanism to refer for treatment those individuals within such population who are screened positive for such diseases.

It also has a duty to establish registries of exposed persons in an affected area to track health impacts in the community where this would be useful. CERCLA §104(i)(8)

2. Hazardous Substance Screening

ATSDR is required by CERCLA §104(i)(5) to initiate research programs on the health effects of hazardous substances for which inadequate information is available on health effects. The program is required to include the collection of human data, in addition to laboratory studies, whenever there is "a possibility of obtaining human data." The costs for research under this paragraph are supposed to be borne by manufacturers and processors or the hazardous substance in question pursuant to the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act as well as directly from responsible parties under the Act's liability provisions.

3. Training Programs

ATSDR is authorized by CERCLA § 104(i)(14) to provide training to physicians through universities. ATSDR is required to establish, as necessary and appropriate, educational materials on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances

4. Grants to Local Government are Authorized to Meet Duties

ATSDR has the authority to enter cooperative agreements (i.e. provide grants or contract for services) with states and political subdivisions (i.e. municipal and county agencies, including local medical establishments that are affiliated with such governments) to implement its various duties CERCLA § 104 (i)(15).

5. Meeting the Costs of the Program through Cost Recovery and Superfund Expenditures

Under the existing Superfund law, the cost of most of the above-specified services, as well as some additional costs of the local environmental health clinic to its operators, can be recovered from responsible parties. Cost recoveries under Superfund liability provisions provide for any necessary costs of response consistent with the national contingency plan and for the costs of any health assessment or health effects study carried out under section 104(i). Response and removal actions under the Act are defined broadly enough include all activities needed to protect public health. Responses include removal actions, "Remove" or "removal" means the cleanup or removal of ...hazardous substances...or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare or the environment." CERCLA §101(23).

CERCLA § 111(c)(4) provides that certain of these CERCLA §104(i) costs can be taken from the Superfund, i.e., the monies can be expended even where no cost recovery is available due to the lack of a solvent responsible party. The specific costs available under the Superfund itself include: "the costs of epidemiological and laboratory studies, health assessment, preparation of toxicological profiles, development and maintenance of a registry of persons exposed to hazardous substances to allow long-term health effect studies, and diagnostic services not otherwise available to determine whether persons in populations exposed to hazardous substances in connection with a release or a suspected release are suffering from long-latency diseases."

APPENDIX 2 EXAMPLES OF CLINICAL PROGRAMS PROPOSED BY LOCAL COMMUNITIES

The concept of the environmental health clinic grant program which we are proposing has evolved out of efforts in numerous communities to establish such clinics. The following are examples of forerunner clinic proposals.¹

SILVER VALLEY, IDAHO

A proposal has been presented to ATSDR by local residents for the establishment of a Health Center for the Silver Valley Superfund site. Silver Valley has some of the highest recorded blood lead levels in the nation. The former lead smelter has contaminated 25 square miles of land in Idaho.

Their proposal calls for the Health Center to coordinate the various health services in the valley. A trust fund of \$5 million would be established to assist the community in dealing with severe lead poisoning.

In view of the impacts of lead poisoning, they proposed that the Health Center provide a coordinated effort between the school nurse, special education programs, public health programs, and nutrition programs.

Simply knowing the importance of good nutrition is not enough in the Silver Valley. Due to the high levels of lead on their property, residents cannot grow a garden in order to obtain fresh produce. And with an unemployment rate of over 25%, few can afford to buy produce. Thus, part of the program would involve issuing vouchers for food to assure proper nutrition and hosting farmers markets to bring in fresh, clean produce from outside the contaminated area.

The center would host medical experts three times a year for the purpose of examining and updating the health status of the community. It would also serve as a Lead Clearinghouse for the accumulation of the latest information on lead and heavy metal poisoning.

The final component would be a tracking of the health status and response to treatment over time.

The clinic would have a Board of Directors with representatives from ATSDR, local physicians and community residents. An Advisory Board would be established for the day-to-day operation consisting of local affected people like some of the mothers of "leaded" children, retired miners, and local health professionals. Employees of potentially responsible parties would be precluded from membership on the Board.

The building to house the center would need three areas - a reception area, waiting room, and examination room. It is estimated that 1 full time staff person would be needed.

¹ Extracted from Communities at Risk: The Peoples' Superfund Agenda.

STRINGFELLOW HEALTH MONITORING AND EDUCATION PROGRAM

The frustrations of being studied and assessed for years without receiving any assistance with health concerns led the community around the Stringfellow Acid Pits site in California to propose the Stringfellow Health Monitoring and Educational Program. The program would have three components: 1) a health clinic, 2) a registry of exposed residents, and 3) education of local physicians to health impacts from toxic chemicals

1. Health Registry

No one to date has established a listing of people that have been exposed to the Stringfellow Acid Pits. This omission has made it impossible to gather any credible information about health impacts from the site or to communicate to people that they have been exposed or update information that could assist them in their health care

A health registry would be established to track exposed people who lived or worked in the affected area over the years. This registry would allow a centralized point for recording changes in health status and incidence of disease. This critical element has been the barrier in our ability to even begin gathering information about the long term, low level exposure to chemicals.

2. Health Clinic

The health clinic would provide a mechanism for health monitoring for early identification and intervention of diseases. It could provide long term monitoring with baseline information of affected people. This provides a central location for records of exposed persons allowing for identification of health trends, disease clusters, etc.

The Glen Avon community is privileged to have a major medical facility and teaching university nearby. Utilizing this facility for the clinic would be preferred to instituting a new facility. It provides the staffing, expertise, and facilities necessary for a successful program.

The clinic could also be a centralized clearinghouse for the latest information on chemical exposure to contaminants and a training facility for future physicians likely to encounter chemically exposed persons. The clinic through its residency/intern programs could provide residents with current information about treatments, and issues that can advance their health care (i.e., the need for women exposed to DDT to receive mammograms more frequently than previously believed). The clinic would also share new information with local physicians to keep all medical professionals up to date.

A resident's interaction with the clinic would begin with an initial screening session where specialists (medical toxicologist, neurologists, etc.) would develop an annual medical monitoring protocol based on the types of chemicals found at Stringfellow. This session would begin the registry with participants receiving the health care in return for agreeing to participate in the ongoing registry. Test results would be shared with the person's treating physician with recommendations for further followup treatment.

3. Symposium for local physicians on toxic chemical exposure

The third area outlined was to educate treating physicians to the health impacts from toxic chemicals. Over and over residents experienced the inability of their treating physicians to recognize or even discuss toxic exposure as a possible cause of their medical problems.

This educational program would bring together experts on chemical exposure from around the country to conduct workshops for local physicians on the health impacts from toxic chemicals

exposure. It would be established in a manner to meet the continuing education requirements int the medical field.

This third portion of the program has been completed. Co-sponsored by the California Medical Association and the Health Officers Association of California, the symposium was held in 1989

SOUTH TUCSON HEALTH CLINIC

Residents of the south side of Tucson near the Hughes Aircraft Superfund site, have received funding for a health clinic - \$250,000 from the county and \$250,000 from the city. This area of the city is a low income Latino community with no health care facilities. The clinic would provide direct medical care and coordinated other health services to residents impacted by the TCE water contamination.

Their proposal called for a full time physician (medical toxicologist or environmental physician) and nurse practitioner. Beyond medical treatment for this area, the clinic would coordinate health services through the schools, churches, and other institutions already in the area.

A Governing Board of community members has been selected. They are currently developing eligibility criteria for receiving health care services.

APPENDIX 3 NATIONAL COMMISSION ON SUPERFUND RECOMMENDATIONS FOR COMMUNITY HEALTH DEMONSTRATION GRANT PROGRAM²

The grant program for community health demonstration projects should provide \$50 million a year for the purposes of:

- providing information to citizens regarding their health (e.g., information from health physicals and tests);
- o referrals to other health care services when diagnosis warrants; and
- o in addition to gathering and providing information, the medical providers working under these programs would have an obligation to provide primary medical care to respond to community needs potentially related to exposure from Superfund sites. This may be provided through existing facilities or through new facilities.

This grant program should support creative initiatives that are designed to meet the needs of their specific communities. Examples of such programs include:

- o in a large metropolitan area, designation of a local hospital to serve as a community's primary provider of environmental health information;
- o in a rural community that has no other medical services, establishment of a clinic for responding to primary health care needs potentially caused by exposures to hazardous substances sites

The program would be a grant program overseen by an inter-agency, multi-disciplinary board of directors to include representatives from appropriate health and other agencies, health professionals, and representatives of communities affected by hazardous substance sites. The board's responsibilities would be to review proposals, select appropriate projects for funding, assist in implementing proposals, and provide oversight to the program.

The grant program would be administered by the agency identified in recommendation #1 and would coordinate efforts with other agencies. The goal of the grant program is to bring all agencies providing specific services together in a coordinated manner to deliver services necessary to truly address communities' needs. Each community submitting a proposal would establish an advisory board to oversee the daily operation of the project and to ensure that it meets the needs of the community. The board would consist of local health professionals, mental health clinicians, educators, etc. but would have a majority of members who reside near and are affected by Superfund sites.

² Prepublication Draft of 12/21/93, page 64.

APPENDIX 4 DETAILS OF OUR PROPOSED PROGRAM UNDER THE APPROPRIATIONS SCENARIO

As detailed in this report, ATSDR has existing authorities which would allow the agency to implement proactive health care. The following are our recommendations for how ATSDR should go about implementing the program described in this report in the event that Congress follows our "appropriations" model for establishing the program.

Amounts of Grants

First year grants of up to \$500,000 per community should be made available under the appropriations program. Communities receiving the grants should be eligible for subsequent renewal grants of \$200,000 per year for up to five years.

Applications for Environmental Health Empowerment Grants

ATSDR and its Task Force should fund at least 10 new projects per year, selecting from the group of eligible applicants who meet the following criteria.

Applicants, who would be university-affiliated hospitals or state or local institutions, would be eligible for a grant (cooperative agreement) when they have established an oversight board to receive the monies and oversee the clinic, comprised of people potentially affected by a Superfund, RCRA, military or DOE site. The board would include at least six people residing within the exposure zone of the facility, four experts chosen by the exposure zone residents that may include outside experts as well as local attending physicians, one local government representative, one state government representative, and one federal government representative. These people would make policy decisions regarding operations of the clinic such as services, and hiring of treating physicians. All board members should be independent, financially and otherwise, of any PRP's.

The scope of the grant -- whether it covers only health surveillance, or also direct medical care services -- would depend on the type of proof presented by the community Medical surveillance funding for diagnostic testing, public health education, a local health registry and other health monitoring (and referrals to other medical personnel for treatment where necessary) would be provided where the task force finds, and ATSDR confirms, that there is a threat to segments of the public.

Services provided under a grant would include direct medical care where the applicant demonstrated to the Task Force that:

- (1) The community suffers a public health emergency, that is, unmet short or long term environmental health care needs due to:
 - (a) A release of a hazardous substance from a Superfund or RCRA corrective action site (including federal facilities and emergency removal sites) in which human exposure is likely to have occurred via one or more environmental pathways;
 - (b) Exposure to the identified chemicals is known to pose potential acute, chronic or latent health effects to exposed individuals or to the future children of exposed individuals; and
- (2) It would be medically beneficial to exposed individuals to undergo specialized interventions which could provide particular types of treatments which would not otherwise be available to some residents.

Mr. ROSE. We compared Minden, WV, with Page, WV, which is also a poor coal mining camp, but Page was not polluted with the PCBs. And our study with Virginia Tech indicated that, yes, indeed, what we call the nine red light symptoms of PCBs are contained throughout the Minden residents.

So, you know, we have done many comparative analyses at this

point.

And also I just like to mention we are working with Linda King of the Environmental Health Network, and we are trying to do a complete health registry right now of all the citizens of Minden, to try to track their health effect for the next 5 years, hoping that we

are going to finally get some government action.

Getting back to the statement, it says, however, through our own studies, which include door-to-door health surveys, actual physical exams, I should say fat biopsies, which we did, we have had blood analysis, testimony from Dr. Hassan Amjad, an oncologist hematologist who treats many of the Minden residents that have serious health problems, and I must say that he treats many of these people free.

Dr. Hassan Amjad is a very dedicated man. He is a very good physician, and he totally believes that PCBs are at the root of the

problem that the people of Minden have no immune systems.

What are the illnesses that PCBs really cause? Minden residents have a higher incidence of respiratory problems, unexplained weight loss. According to Dr. Marvin Legator, a toxicologist at the University of Texas, PCBs exist—exit the body during weight loss and this is when the damage to the body is done. Skin rashes, gastrointestinal problems, eye irritations, liver and kidney damage, immune loss, various cancers.

The children in Minden score lower on county-wide achievement

tests. Some have learning and behavioral disorders.

Women have had very high incidences of miscarriages and still-births. The Vanderbilt study of 1986 pinpointed this out, and I want to stress that 62 percent of the childbearing women in Minden, WV, have had stillbirths, miscarriages, or birth defects. That is not acceptable in America. That is not acceptable in any country in the world.

There is something definitely wrong here that our struggle has taken 9 years and now going on ten. Currently, the Concerned Citizens is conducting an extensive, ongoing health registry in Minden with the assistance of Linda Price King of the Environmental

Health Network, Incorporated, out of Chesapeake, Virginia.

There can absolutely be no dispute that the Minden residents have serious health problems as a result of the contamination. The property values have dropped and residents obtained statements from the county tax assessor's office that this is a direct result of PCB contamination. The individuals who want to sell and leave are either stuck with their property or it goes at a cheap rate. This sets up the stage for absentee or slum landlords who can prey upon transient, low-income families to move into the houses, which are in most cases substandard. The new individuals who move into the community receive the broadcasted message in the press by the EPA and the ATSDR that there is no danger in living in Minden.

Mr. APPLEGATE. Mr. Rose, right here, the Chair, we are going to have to interrupt you at this point, because we have a vote on the Floor of the House. So we are going to have to recess temporarily; and if you just wait, we will be back and try it to make it back in 15 minutes.

Mr. Rose. Yes, sir, thank you.

Mr. APPLEGATE. We are temporarily—or we will be recessed for 15 minutes.

[Recess.]

Mr. RAHALL [presiding]. The subcommittee will resume its sitting.

Mr. Rose, you may continue.

Mr. Rose. Thank you. As I was stating earlier, when new individuals move into the community of Minden, they receive the broadcasted message in the press by the EPA and the ATSDR that there is no danger in living in Minden. Is this the EPA and ATSDR setting the stage to be held liable for human suffering and lives with these individuals in the future?

The EPA actually told a new family that came in—in Minden in April 1994, that there was no danger or contamination on their property. The family pulled out documents supplied by the Concerned Citizens where the EPA themselves had documented con-

tamination in their yard.

Is this behavior by the EPA ethical? I mean, I would have to say that, you know, I think everyone would agree that this is just not ethical behavior by any government agency or any agency or industrial complex to actually lie to the people, to lie to the community. And that is what we found out the EPA has done. And that is what the ATSDR has done. And I must say that they have done this all across the country.

So I am hoping that the new, you know, bill which is going to be reauthorized—Superfund is going to put some, you know, teeth into it, where it makes the EPA accountable to the communities, and that the communities themselves can work with and have real power in overseeing what the EPA is doing for cleanup and the

ATSDR for health care.

The responsible parties, Shaffer Equipment Company owned by William and Anna Shaffer—Bill Shaffer, incidentally, had cancer, but died of a heart attack. Berwin Land Company owned the land sold to Shaffer and other land adjacent to the plant. There are indications that the electrical equipment came from virtually all over the United States—Illinois Indiana Power, Walter Reed Hospital, John Hopkins Hospital, and many others.

However, the EPA has filed suit in Federal Court against Shaffer Equipment Company and Berwin Land and John Hopkins University. Partial settlement has been completed by Judge Hallanan in Beckley, but the Minden residents received nothing from this.

EPA and ATSDR's current position with Minden today—and this was really told to us in May of this year when the EPA and the ATSDR came into Minden and they said, actually they set up a meeting at the Holiday Inn in Oak Hill; they would not go into Minden, which we really resented the fact. The United States EPA has attempted to clean up Minden on three major occasions. To this date, the EPA will admit that there is still contamination at

the Shaffer site, but says that no more cleanup efforts will take place. Their solution now is to spend \$2 million more to seal the site, put more fences up, place drainage ditches around the site, and tear the Shaffer building down, which contains 4,500 parts per million of PCBs.

At the May 1994 EPA-ATSDR meeting, held for the Minden residents, the ATSDR told the Minden residents that no health—that no health care will be provided because their health assessment does not warrant that there are any health problems in the Minden residents. The Concerned Citizens has previously pointed out that the ATSDR has serious inaccuracies in their health assessments. The ATSDR did not even do a door-to-door health assessment or even talk to—or take one physical exam of a resident, much less talk with Dr. Hassan Amjad, who treats many of the Minden residents.

At the same meeting, Minden resident—a Minden resident was told by a toxicologist from the ATSDR that she is now diagnosed with cervical cancer and that PCBs actually would help her cervical cancer, and we have this on video. This is ridiculous, that an ATSDR toxicologist would come in and make some type of absurd statement such as this.

The EPA has told the people of Minden you could eat the dirt with spoons. We have this on videotape as well, that it will not hurt you, so don't worry about it. You know, you could eat it, you know, with a spoon, don't worry about it. The CDC flew up Dr. Weisbarger back in 1989, and he told the Minden residents that they could also eat the dirt; and he laughed at the Minden people when they tried to ask him health questions.

So this is the type of abuse that the CDC, the ATSDR, and the EPA, their callous attitude towards poor people has been over the

9 years of our struggle.

This toxicologist on videotape in part of his response to this individual actually stated that a certain—his response to the individual actually stated that a certain amount of PCBs are good for you and help arrest cervical cancer in some cases. Now, come on, is this ethical behavior by the ATSDR or what? And we can supply the videotape where this was said. This is really ridical actually actually actually stated that a certain amount of PCBs are supply the video-

tape where this was said. This is really ridiculous.

We also have it on tape where they have pointed to the residents that you could eat the dirt with a spoon. Well, we demand after 9 years of struggle, now going on ten, we demand social and economic justice, that being relocation of the community, compensation and health care, a free clinic to be established and to work with local physicians such as Dr. Hassan Amjad, who treats many

of the Minden residents at no charge.

We do not want the ATSDR to come back to Minden unless they are going to be—to honestly assess the absolutely ill health effects and provide actual health care to the Minden people. And I should mention that the ATSDR has within their mandate to establish health clinics. They have said in public meetings, which once again we videotaped—we videotaped many, many over the years—that they do not have the authority to provide health care, which is not true. It is in their mandate. They also can establish health clinics, and they are not being truthful in that item either.

The ATSDR has actually done more damage to this community,

and this is a Federal agency.

Please provide the Minden residents with the money that will pay for the salaries, travel and other expenses incurred by the ATSDR to prepare an inaccurate report—I may be reading this wrong. Please provide the Minden residents with the money that pay for the salaries, travel and other expenses incurred by the ATSDR to prepare an inaccurate report and tell direct lies to this community.

In other words—I guess that statement was written wrong, but the monies were provided for them to prepare inaccurate statements; that is what I am really saying, okay—that, you know, Federal monies were used to actually document untruths. They mixed up a health study that was done in Beckley, at a Beckley site, with Minden, and tried to, you know, tell the group that, you know, that

was in our neighborhood also, which was a total untruth.

This money can go to the desperate need of the actual health care for the Minden people. Please help the Minden residents provide relocation and health care to these human beings. Because after all these years of suffering, if you go to Minden, WV, if you walk down through the town, one out of every third house either has cancer, liver damage, immune problems, chloracne, children with learning disabilities. This is a crime. What has happened is a crime.

We didn't mention in this report about the crime that Bob Caron committed, the Region 3 on-site coordinator which had no college degrees, no master's degrees. His own—his own companion and on-site coordinator, Steve Jarvala, did the internal investigation by the EPA on Bob Caron's work. And they said that it was justifiable and valid. Now we do not accept that. That is ridiculous. And I know that Congressman Rahall asked the General Accounting Office to do an investigation; and generally the General Accounting Office came out with—their statement was that it was a bungled up mess, that it was not an accurate and fair investigation. We need a new investigation as well. So I would like to stress that.

And really at this point, all I would like to say in my last closing statements, before I turn it over to Lucian or answer any questions, is that if we cannot get relocation for the people of Minden, if that is not really feasible, even though the State senate of West Virginia last year passed a resolution and asked the Congress of the United States to please provide money to buy out Minden because West Virginia has said for years they could not afford to relocate the people, if we cannot relocate the people of Minden, the only fair, equitable thing to do, is to provide a clinic, a free clinic to these people, help these people that have no medical care, no money, no jobs, and try to give them a fighting chance in life. And that is really my statement at this point.

And, Lucian.

Mr. RANDALL. My name is Lucian Randall. I am from Minden,

WV, and I am pleased to be here today.

My experience with the EPA and the ATSDR is going on 9 years, just about. I first got in touch with the EPA—I was ex-coal miner and a man came to the door, knocked on the door. He asked me, did I know anybody wanted the job. Quite naturally—I just got laid

off at the coal mine; mine closed down for a while—I accepted the

job.

So I was working with them, oh, about a month. My fingers and things started itching. I didn't know what was going on. Of course, they didn't tell me what they were doing. I was just guarding the equipment for the EPA. Rode on, rode on, my eyes started burning. I had no gear or nothing to put over my gloves or protection suit or anything. I didn't know anything about no PCB.

So one afternoon I was sitting on the steps there and this scientist out of Hawaii with the EPA, she said, Randy? I said, What, sweetheart? She said, We found it. I said, Found what? She said PCB, polychlorinated biphenyls. I never heard tell of this before in

my life.

So I go home, I started reading up on it. It goes on and on. So Bob Caron told me one day, says, "You don't have to worry about that." So my body gets worse. Every time I go home, one morning I came out of the bathroom, combing my hair, all my hair was in

my hand just about, in the sink. Rode on from there.

I was telling the other guard down there, I says, Something is wrong around here, all my hair's coming out. Then I went to a doctor there in town, about a mile out, and he sent me to a skin specialist. All they would do, they give me a little prescription, give me a little \$40 worth, tube of medicine. I went to three different ones; they couldn't find out what was wrong. And finally I got in touch with Rose and John Davis and them.

I went down to Scarborough Clinic and they take some blood tests of me. About a month or two later, they came back; I had 14 parts per billion in my body, in my bloodstream. Three years later,

I still have that 14 parts per billion.

Then, later on, where the State let us have some money, we had a biopsy taken of a little small fat out of the body of your skin, the fat part. And still, came back the highest. And then I was talking with the ATSDR and Dr. Barry Johnson. I been here three times in Washington with him, but he is always going do this or do that, and I haven't seen him down there yet. But he sends men, we have a meeting. No one yet ever came on the site to inspect. No one is there, nobody mentioned no health or nothing. EPA never talks about it. And the people that—just look at the people alone down there.

I seen some 40 some people die since the EPA been in there. And they all die with the same identical thing; it is cancer. I have skin cancer myself and something else; the doctor—they can't name it because these doctors today, they are not trained in different chemicals. But you know, with the PCB and stuff, and Dr. Amjad, he takes me in as a free. He doesn't charge me anything, let me in free.

Which I shouldn't be—I should be able to go anywhere in the United States free; I am a prisoner of war out of Korea. But still, we can't get no service right in the States. I was treated better over in the concentration camp than I am back here in my own home, according to the government, with the EPA and the ATSDR.

But the children down there, I know of three children are brain damaged. One child is 11 years old; one I think is 6. I know the mother and father well, and their three next-door neighbors passed

recently. And the lady I was rooming with, she passed away 2 years ago; my brother passed away 2 years ago. People are dying. They need all the help in the world they can get. And it is pitiful.

And they—the ATSDR comes in and tells there is nothing wrong.

They never examined no one.

So I asked the lady one day, Lindy, Linda—anyway, they are ATSDR; I can't pronounce the name right now—she told, says, Randall, don't have to take like you, or examine you or someone else, because you are the oldest one in Minden, don't mean anyone else has the same disease. We know it works on your body different you know

ferent, you know.

But everyone is down there, been on the coal field, has that PCB in their body. I know this; I read up on the stuff backwards. And I have been all over Mississippi, Georgia, Tennessee, Kentucky, North Carolina, Ohio, and they run the same trouble with the ATSDR and EPA as we do. This is another Minden setup; that is all they do—there is nothing wrong, we will do this, we will do that—but they never do anything.

They have been studying and studying for years, 9 years studyings, billions of dollars study up on some dirt. We are the human at—we are the human body. Nobody ever studied the human body, just dirt. That dirt be there for million and million years. I don't need no dirt. When I go back to my grave, I am dirt

automatic.

But I just want—my time is running out; I know this. I am 67 years of age. I want some help for the children and what few elders coming up, generation younguns coming up, get them moved out of there and let them have something. Most of them are illiterate, they are illiterate and they don't understand. After I am gone,

Larry gone on, there is no one to help them.

I have to get out myself. I moved out of Minden about a year ago. I comes—I walks all the way from my home down there to help those people pay their bills, do errands for them. They are so sick, it is not a lady close enough, know me and my 12 men down there; and you young children—the children comes in living in the summertime with the grandparents, and grandparents keep them the whole year-round. All this, and they are not—they don't understand about paying bills. I do all this. I am getting old myself. I just want somebody to help them out, get them away from down in there and give them where they grow up in life and learn something.

I thank y'all.

Mr. RAHALL. Thank you, gentlemen, very much, for your well-prepared and thought-out testimony. I think you have given the committee an excellent example of a problem that exists in Minden, and which exists elsewhere many times over in other communities of this Nation.

Let me ask either one of you if you could give a brief description of the physical condition of the Shaffer site today. I recall during my visit there that the fence was not very much of a fence. The site was easily accessible by small children playing. It still, of course, exists right there on Arbuckle Creek. If I recall, there were still drums there. And does that condition still exist today, that the fence is not adequate to keep out a kitten?

Mr. RANDALL. No, you cannot keep no trespass, nothing; children can go play any time they get ready. But they finally moved the drums. Senator Goldwater—Rockefeller, had them move the drums. But then they didn't move them right then; they waited about a year and three months later to come get them. But still there is no fence.

Mr. RAHALL. But those drums are completely removed now?

Mr. RANDALL. Yes, they are completely, but it is still highly contaminated.

Mr. Rose. If I could just interject this, that behind the Shaffer building—the fence is, you know, does not go all the way around the perimeter. You have easy access to, you know, walking on the site.

Behind the Shaffer building, the EPA has said that they had built a berm, which is a large mountain of dirt, okay, to keep the runoff from going in the Arbuckle Creek. Because Arbuckle Creek meanders down throughout Minden.

And Minden's a floodplain, and I am sure, like I said earlier, it is flooded today, it will be flooded tomorrow. And there is no berm back there, which the EPA says that there are, you know, to pro-

tect the people of Minden. There is nothing like that.

Bob Caron, the last time that we had a public meeting with Bob Caron was back in 1991. And we had the maps and the documentations from the EPA. And the levels of PCB still in the site right around the Shaffer building are in the thousands. And Bob Caron—you know, I said, Bob, what are you telling us? Are you telling us the deeper you dig the hotter it gets? And he said, Yes, Larry. He said, But don't worry about it, because we got two feet of soil on it now.

Well, two feet of soil is not enough. It is not enough to stop thou-

sands of PCBs.

And the layout—I just want to interject this, because the entire plateau area, which consists of Oak Hill and a lot of the surrounding region, gets 70 percent of its water supply from Minden mine number three. Minden mine number three lies directly below the actual Shaffer site; and the pit that George Burgess and John Davis and other Shaffer, former Shaffer employees say that is on the site, they have taken the EPA out numerous times, State officials. We know where the pit is. Mr. Shaffer had a large pit—20 feet by 40 feet by 15 to 15 feet—dug; thousands of gallons of PCB were poured into this pit, and then took a bulldozer and bulled it over—bulldozed it over with shale and red dog. Now all this is seeping down into the mine.

And we have asked, you know, the EPA, you have got to take core samples, sediment samples, because of the water situation. Any time that we have a drought situation in the Oak Hill area, the water level is going to go down because we get the water, you know, for our town from Minden mine number three, and sediment

is going to be kicked up in the pipes.

Now, you know, they say they are unable to do that. They are saying that they cannot drill through 15 feet of shale? You know, you can't tell me that. I mean, you know, you can drill natural gas wells, you know, all throughout the State of West Virginia, and oil wells in the northern part. You can drill through shale.

They don't want to find it. They don't want to find this. They say, It is contained. They say, Leave it alone. Well, we know it is leaching throughout the ground, it is leaching back into Arbuckle Creek, it is leaching into the mine water. And that is where we are getting, you know, our drinking water right now.

Mr. RAHALL. When was the latest they told you they were not

going to do that drilling?

Mr. RANDALL. May, I think.

Mr. Rose. They said it in May, but I just received a phone call from Steve Jarvala 2 days ago, who is now the on-site coordinator of the Minden area and Region 3; and also he was the companion of Bob Caron, who did the internal investigation, and he tells me that they are coming back in two weeks, about the second week in August, he said. And he said, Larry, don't worry about it, we don't believe the water is contaminated.

Now, you know, when he comes back, once again I am going to say, you know, we want the mine water, you know, the sediment tested, we want that pit, you know, tested. You know, the EPA can't just keep telling the people, you know, no, we are not going to do these tests and everything is okay, and we will build a fence for you and build a drainage ditch and tear the building down and

that is all we are going to do.

I mean, you know, they are talking about wasting another \$2 million. And, you know, once again, we will continuously, until no one is left in Minden, prove that Minden's very hot with PCBs and

PCDF and people are passing away.

As I was telling Jim a while ago, last summer we met with the State health director, Dr. Wallace. Dr. Wallace met with myself, Lucian, Dr. Amjad, my wife Sharon, and Paul McGee. And Dr. Wallace said that he was going to really take a look at Minden,

that he thought it was a serious situation.

Well, at this point, I have called Joe Shock, who is with the health department—I forget his exact title; you know, environment part of the health department—and at this point they haven't taken any action. But Dr. Wallace—and we have this on tape—Dr. Wallace said if something is not done in Minden, he said, you won't have a problem anymore, because there won't be anybody left. Now that is the State health director that would say that.

I mean, you know, this is, you know, it is just—it is a crime what has happened here to poor, economically deprived people. You know, these people have unalienable rights. I mean, these people are Americans, too, and they should be treated with respect. I don't care if they are poor or not, that they need to have, you know, a chance for life and liberty, and the kids do not need to suffer learn-

ing disorders, you know, as they are.

Mr. RAHALL. Let me ask you a question about one of your re-

quests here, that being the relocation of the community.

As a general matter, except for the Love Canal situation, are you aware of any other relocations of communities across the country

by EPA under Superfund?

Mr. ROSE. The only one that I can mention, Congressman Rahall, off the top of my head, is Times Beach, okay. But since then, I—what? Centralia was also moved, okay, because of the mine fires. And what else, Lucian?

Mr. RANDALL. Place in my story.
Mr. ROSE. Okay, that was Times Beach, okay. But if—we could get the data.
[The information follows:]

October 31, 1993 Garette-Nasi

WEEK IN REVIEW 4 BUSINESS 6-10

if they'll ever be free of PCBs Residents of Minden wonder



Shaffer Equipment Co. EPA representatives ere apain in Minder. water at the vacent leading the soll and ent gained during the alte, land heavily biphenyle (PCBs) polychlorinated 1970s with

> By Ripbert J. Byers SUNDAY GAZETTE MAR.

MICEN - A young boy in a red shirt plays quickly be the tase as the fallen action of plays and be the set to be th Start against the seasonal yellows and browns, the figures spread out over the brash-covered field, their protective ratio guarding against the invisible eval hinden there. Assistable boy plays, now communing softly to buseeld and packing nodes toward a resting stream.

"I Sevel down there from the day'they found!!, until three months ago." Voter safe softly. "I couldn't infer to rest says here clee. I have it was "lifting me safe ny originors, but I couldn't have." Career and the latura vessors tube feeding from her arm, liftentha Yoder, 64, turned on her Oak Hill hospitals had propped her head on her fist. Polychlarineted bigheayle

Agency, and so began a long chain of events, specified and each, disease frestration and lies Nearly is years and three EPA releasage later, the couple to the will the Minden and a rould estimate state are still to Minden and a rould estimate, sproup is still if igniting. DMRI abritoo the U.S. Ehrmonmental Protection POlite (palychlortoxicol bipbesyts) were first discemented in Mindes is 1954 by the state Division A resport usued this summer by the federal Agency for Tomic Substances and Disease Register of Material Resources.

During their 13 years in Minden, Yoder and her hanband tived along Arbachie Creek. buried bowes to live out their 540-year half-life.

"Each line is would flood, we'd wait out through it," she revisited. "The oly mean waahing down from Saeffer was enough to make you choke. The last time we had to burn our chokes."

Your's husband died in January of has problems. See counts 55 of her Nithen pelabers who died of what ale condiders PCB-trained fibrenes. See has trouble with her heart, shood pressure and kidneys.

Three months ago, her doctor leased her e mail place to Oak Hill, a seaso make or two away from both some, but far cought to be above Minden, the white sails and the smell. The electrops and the liter

Mindes used to be a booming little coal fore. Lectan Randall, 66, grew up is search; Summeter but often came to Mindes to play brasehall so its

Theore used to be a big old slag pale right there in the modeller of be also." Rendall sale. They washed to move at and first hanging around, so they maked me if I washed a job." "I've been in and out of here since if was a child.
Thes thoul 18 years ago, I moved ever here with
some boys to work the mane." Sandall and "The
mine played out, bell I stayed." Then the RPA showed op

For two years, Randall worked as a grand at the

"I just wanted a job. I didn't know what they were really doing," he said "I didn't have any protection or anything."

Payette Omniy leginlators in 1967 introduced a ME to move and care for Minden residents, but aspection from the state Realth Department tilled

Mades pight, has fought for the government to release the provide them with adequate health care

Nearly 10 years and three EPA cleanage leter, the people in the withte naits are still in Mindes and a small citizen a group is still ingiting.

For two youth, Rendall worked as a guard at the

"I just wracked a job. I dude't know what they were really doing." he said "I didn't have any protection or anything." Today, Rendall has the distinction of baving

resident tested. Bis blood tested 14 parts per billies and his (at cell count rans even higher EPA had pot Shaffer on its Superfaud list as one of the five cost hazardous alter in the country. It plied 4,800 conkit, yarden of highly constantiated and its nearby clay-lined pit adjacent it or Monthle Creek, also contaminated and flood prose.

A report found that remove to the Archerd Agency and Theory Salacherd for three the salar for even a tell reconstruction for three separate sections. (BY and relative to telcan. — or separate sections. (BY and relative to telcan. — or separate sections. (BY and relative to telcan. — or them enemy level. (By the BE) has a visit of the description of a jeiner (to sharp on recede to make m) for a three man of the properties of the second of the second density of white properties of the second density of white properties of the second three properties of the second density of white properties of the second density of white properties of the second density of the second

There is the poor people and that smell. I still go to charch deem there, and when I hit the top of the bill, I can smell it just lake always. The stall the same down there." Voter said

Yorker pulled the shoet around her a little dighter and ghannel at the aged woman in the next bed, who starnel back at her, the bhank look of death on her

"Ill many be latte for me," size said satele turned bosh. "Sait dhere's people dwn there that used help bad. There's young kids that need belp or they won? are to see St."

Curon called the process "sorest extraction," and told citizens, "I have no doubt it will wart."

In 1986 EPA and its no-scene coordinator, Bob Carco, decided to try to revolutionize the world of taxies removal by treating the sell on-site with a

methanol solvent, an experimental process to reparate the PCBs from the dirt.

It falled miserably and cost more than \$2 million Throughout this time and to this day, the Concerned Chuses to Save Payette County Inc., a grass-roots organization formed at the start of the

PCBs have been liained to a number of health the description and althory problems, and destrocking grants, busy and lathory problems, and destrocking to the immunes yielder. Effective intercents and tensialous, the persustent description and the persustent description in the persustent committee were made widely before the government beamed them to 1979.

BEEL Samfor, the owner of Shaffer Equipment Co. in filmoda, was a log user of PCRs, and from the looks of the turns and its readents, also a log spiller of PCR-basine oils. Shaffer has since died of a beart of PCR-basine oils. Shaffer has since died of a beart

attack after suffering with capter

carrent laws teached in tradement at the Musican star, applied and demped the POS only once the present and tomored the coll for Nata. Challer also yes the sail or Marches and search Rocks Liver remainstate to burn for warmful to their houses. When The sail search, they release a orbentival model by alliances. Permer Shaffer employees said they routinely

Shaffer didn't know. The eroployees didn't know For every I billion parts of Yoder's blood, 7% parts are PCBs. That's sick counting the PCBs that has bave altered in significant to but its cells where they will stay even after side is gone, seeping fine better. Vebady later

Three-year-old Ryan Carson's hometown toxic waste alte. Ryan's father. Bruce, worries about the environment Me son is growing up in. was once a booming cost town, but for nearly 10 years has been known only as a

See MINDEN Page 589

Less than two years later, at the urging of the clumes group, See Jay Rocketelder. DW Va. cume to Minnes group, See Jay Rocketelder. DW Va. cume to Minnes to be another the period of the comment of the period of those confusional barrels the people removed 21 more confusional barrels the people.

EPA said the Fayette County site was clean. Maden could get on with its business.







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for several press to get help for finishin.

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Former Shaffer employees have mais the jet is where they demped the lion's share of the spent PCBs. but the EPA chemings have never directly effectined the pit.

SUMBAY GAZETTE-MAIL, OCTOBER 31, 1893

Killer soil: Residents wonder if they'll ever be safe from PCBs

spake of and then found six more underground electrical transform-Continued From Page 18

The said Legislature allighted that the said of the sa . More pulticians apets in him-den, locinding the Rev. Jesse inches... RPA said the alle was clean

The result of the Joseph Lead.

The presult of a middle field.

The presult of a middle field of the field of "He was a good apealor, but we those with he was bere." Renotal sold. "It was mean election time and he was remoting for president."

was less than a year old and con-broade non-cone deliberately per more PCBs there. By then, the IRA had spens tsore than \$1 mil-ties on the project. Repardiers, another pit was prepared and the Cable yards of bull man centained. Although more centamination was stated to be there. EPA said it was respended

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"Mill beyon chemical as in its in the beyon chemically spilled," Brown as an exclusionally spilled," Brown as an exclusionally spilled," Brown as the studies as and the spilled as the sp

Arvella Fruit, 37, balleves the EPA has cont 1.cted fleeh many times by saying the toxic alte next at home is clean. If the opportunity presented itself, .../rt said she

At residents, w. 18 percent

std take 3-year-old daughter, Alisha, and the rest of family away from Minden.

Rose, Angled and other mem-bers of the etthicss group met with state health and convironment officials to August, a feat to tradi-considering past Bealth Depart-ment apposition.

The group asked that the state Health Department conduct physiexaminations of the Minder

> hintance, part of the report fained is with a Bechley gr-fogist's study of residents a road in Sophia. e ATSDR report was "so gly, lacompetently" done, it sid not be taken itterally, ideald. secule who had the higher experienced cent had sith of had eye in-

signs to twep people out of the thi-monest clouding listed. Children rou-terly go onto the site to play.

The only that if can seld them is by the fitted i how " and deretts A Themsens. 33 who has low young but not a problem for people who keep out. There are no fences and no

Reck Lick residents, work with the citizens group on the five-year health assurement, it is preparing, and reposal the ATGIN conduct a new kealth assurement of the said they would work with the cit. Litters and belp them to gala an ATSDR grant for a bestite study

EPA said the site was basically clean and there was nothing to From 1984 to 1987, Caron was

RPA's on-scape coordinator at Mission. He ran the show. He later came back to Minden on the tall-cad of the last cleaning to assure grace constantly questioned Chram who come observed. These people don't seem to believe a curd we say. residents the remaining contant-mants were contained. The clumen

Then it was learned that Caron may be about all accelerates. He was not qualified to lead a clean up. So was not qualified to calm propies than about evils in their earlik water or allors

Bob Caroo last to the people of Murden. He resigned his port and fater pleashed guilty to perfury in the state of Maryland

To assess Caron's work at Min-dra, EPA appointed the deputy project officer, Stephen Jarrela, per who had worked chookly with Ca-roa, to review the cleanap

eo problems and said He found so problems Curan acted accordingly

Because Jarrela and Caron had its worked together, and be could do have implicated shrarelf with any had word about the cleaning processor dures, the retitions group froth has no review a conflict of interest. A social problem

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den residents, has been critical of the govern-ment's afforts to solve the Dr. Hassan Amjad, who has stulled the health of Minprof fem.

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"If was a furegore coordinate.
They had a prevented colors if was clear and everything was all was clear and everything was all they was never than just a balling problem." Yes count completely upone to it for the most because to yet a leaf they are not politically importa. Dr. Amjad was never contact woring a lot with Agest Orange, so I then ght be may have been exposed to some sort of cheroteal."

Anjad ut "I vented his bone and found out of the sort and found others with similar "At 'he VA Hospital, I was

Anjad wonders why the £3 mil-bes speed by the £7% for three cheergo could not have been used to feace off Manden and refocute the remoters as has been done in places like Times Beenth, Mo. and Love Canal, N. Y. PCBs and began taking a closer look at 'denden The Pakistani found out about the problem: I found a lot of cancer

"You can buy a house in Minden for \$2,000," he said "Those peo-ple can't afford to beave their dortor had seen poverty in his Third World borneland, but was shocked b. Minden, a town where per capits income as \$4,080 a. He journ with the local citizens

ple can't afford to beave their bornes behad for permes Even to people around bere, Minden doesn't exist. Taking the Minden Road from Oak Hill is like driving

AREA RESIDENT ARE GIVING

With flu season approaching fast now's the time to take action, and rune's ראיסית איני טו אינו שלו

The people who had the higher Tree as PCBs in their blood are grown mostly all dead." Amjad said, N. "Serenal Shalter employees had a kidney cancer and most are to For instance, part of the report was mixed is with a Beckley gy-necologist's study of residents slong a road in Sophia. perrent had digestive problems.

1) percent had necurrent infecuous, 1) percent experience di
weight loss, 4) percent had sign a
poublems, 1) percent had eye inproblems, 1) percent had eye inproblems, 3) percent had result in
y problems, 2) percent had result.

The study was done by Vasder-bill students in 1886, but still the state and county health depart-steds argued against taking any bealth measures. adult women had experienced miscuriage, silibirith or birth de-fects in their babbes

When the (referral Agents) for Total States and Deseas Re-French States and Deseas Re-port this year, it used to matery port this year, it used to matery port this year, it used to matery and real read port of the brood and real standards by the citizens and present and the report and the safe was still constantionaled, but not a refer to re-utilities propelled besults.

But critics say the report was done from behind a dealt in Atlan-

The ATSDR report released in June recommended the EPA pot a fence around the still-contaminated Shaffer site. It said contamina-tion is possible for trespassers, A new day?

There are main some poose to a Minister a better of PCES. Some of the York angay when PCES. Some of the York angay when the PCES. Some of the PCES was a some of the PCES with the PCES "The AZCIA report was not the end for Minden, it was a new start, a new layer of iscompetency to fight against," Rose said. Rose hopes that those rendents who want to leave Rinden will be relicated and those who insist on staying will be compensated

Larry Ruse, the leader of the Concerned Cliness to Save Pay-ette County, has worked tireformly

Health Department officies and they would work with the cit-ioess and help them to gate an ATEDR grant for a health study.

moved beafing that Calabra resthey per cook that to play a fact that they a The coly that I can tall them is be fulled. The map of the they are a fact that they are a fact tha

And the state of t "If I days brawn there would my be southing here the this to call the second have no come back. I've but in the Brax, the but here, you know it is going to be get you soomer our later."

JUR FIVE LOCATIONS

ENJOY THESE MONEY SAVING ITEMS FROM

When the bealth survers came

group and voluntéered his sees to the people of billades/

Mr. Rose. I believe at this time, and I was at a meeting with Linda King a few weeks ago, and Linda was talking and she said that, and Willie—Will Collette, matter of fact—and Jill knows Will Collette—I think that about 20 different locations have been relocated at this point. And the money for the relocation would be very cheap. We have already—we have calculated what it will cost to get these people out of there. If it takes \$2 million to seal the site, they have already wasted 6 million, we can move those 350 families—not even three; probably not 350, probably 300 to be honest with you—but with \$30,000 homes; and that would be very nice for these people.

I mean, it is a nice home in southern West Virginia, and we could get people to help even in the housing construction. We have been even weatherizing people's homes because, you know, they are so dilapidated down there. If we could just provide \$30,000, would equal \$10 million, we can get these people moved out of Minden.

And that is not that much to ask.

Mr. RAHALL. So you are estimating the total to be around \$10

million?

Mr. ROSE. \$10 million for a total relocation, and \$2 million to seal the site. That is what the EPA is projecting to seal the site.

Mr. RAHALL. All right. Let me ask you about the health care grants. As you know, you mentioned in your testimony the ATSDR does have the ability under current law to provide those health

care grants. Why do you think they are not doing such?

Mr. Rose. I think the main—I really think the main purpose of the ATSDR is to go into communities and tell them that there is not really a problem and to get out. They are not—their purpose really is not to go in and do any type of investigation—no physicals, do not contact the local physicians, which they should be doing that. They use local citizens groups' data, and then they try to twist that data around, and they come up with some absurd, you know, figures and conclusions which are totally inaccurate so that they can get out of a town. They don't want to label a town that would need a clinic or need to be relocated or need health care.

I mean, we truly believe—and I have talked to communities from all over, you know, the South and the East and Lucian has, too, and Sharon has. I mean, we have been to the Highlander Center, we have been to the Southern Organizing Committee, we have been to SOC, Save the Mountains in Kentucky. All the groups will agree with you; these are grassroots groups of people, these are the folks that really live in the contamination, and they will tell you that the EPA's main purpose is just to protect industry and to get out; it is not really to help the people. And the ATSDR does not

want to do a true health assessment.

One thing that I would like to do, if I might be able to, I would like to submit further documentation to be included into the record, which I think would be, you know, very valuable in helping Congressman Wise and Congressman Rahall and everyone to understand the problem of Minden. Because, you know, the problem with Minden is just not with Minden. Minden folks are dying; and they are going to die, there is no doubt about that, if something is not done. And the kids are not going to learn, and that is not fair or free in America for this situation, to have this go on.

But the EPA is treating people like this all across the country. I mean, the EPA needs to be reformed. The EPA really needs to have a hard look taken at it. It needs to be accountable for what, you know, it says its mandate is. It should be responsible to the community. It should listen to the community people. It should really work with the community people.

I know that I was talking with Congressman Wise about the community working groups. You know, if the community people

really have input, that is a good idea.

The health clinics are definitely needed now.

Mr. RAHALL. Without objection, the materials you want submitted for the record, all of them, will be made a part of the record.

Mr. ROSE. Okay, thank you. [The information follows:]

1986 PANJERbilt HEAlth Study Of MINDEN Residents

AGE & SEX	DI	STRI	BUTI	ON:
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	MALE	FEMALE	TOTAL
ADULT	72	69	141
CHILD	13	19	32
TOTAL	85	88	173

KEY TO SYMPTOM CODES:

CANCER (CA)

CHILDBIRTH ABNORMALITIES
MISCARRIAGE (MC)
STILL BINTH (ST)
BIRTH DEFECTS (BD)

LIVER PROBLEMS

YELLOW JRUNDICE (Y)

MEPHTITIS (HP)

LIVER PROBLEMS (LP)

KIDNEY/BLADDER (KB)

KIDNEY INPECTIONS (KI)

DIBESTIVE PROBLEMS
INFLAMED/ABSCESS (IA)
DIBESTIVE PROBLEM (DP)

RECURRENT INFECTIONS
PERSISTENT COUGH (PC)
PERSISTENT FEVER (PF)

N PROBLEMS
DRY SKIN (DS)
ACNE (AC)
REDDENING OF
RAIR LOSS (HE OF SKIN (RS)

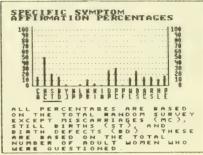
EYE INFECTIONS PINK EYE (PE)

RESPIRATORY INFECTIONS
PERSISTENT COUGH (PC)

DISTRIBUTION OF 19 SYMPTOMS

X = SYMPTOM AFFIRMATION 大 = RAW NUMBER 口 = PERCENT OF THE 173

Neg %	大大: ロ[=	23%
(€)-18<25	*****************	100 J	38%
5>e<=10 #	☆ ″	*	14
10>H<=15		H 0	0 0 %
p15 *		TEC.	8%



CANCER ca (16% or 27 CHILDBIRTH ABNORMALITIES
MC (51% OR 35 SUBJECTS)
ST (22% OR 15 SUBJECTS)
BD (23% OR 16 SUBJECTS) LIVER PROBLEMS

YJ (2% OR 3 SUBJECTS)

HP (2% OR 0 SUBJECTS)

LP (2% OR 3 SUBJECTS)

KB (12% OR 7 SUBJECTS)

KI (4% OR 7 SUBJECTS) DIGESTIVE PROBLEMS
IA (1% OR 2 SUBJECTS)
DP (27% OR 47 SUBJECTS) RECURRENT INFECTIONS

PC (31% OR 54 SUBJECTS)

PF (1% OR 2 SUBJECTS) WEIGHT LOSS SKIN PROBLEMS
DS (25% OR
AC (15% OR
RS (15% OR
HL (11% OR 4221 SUBJEC SUBJEC SUBJEC SUBJEC EYE INFECTIONS
PE (17% OR 29 SUBJECTS) RESPIRATORY INFECTIONS
PC (31% OR 54 SUBJECTS)

DISJUNCTIVE COMPOSITE CA MC...BD YJ...KI IR, DF PC, PF WL DS...HL PE PC スカース 4万000年

KEY

Mr. RAHALL. I may have some more questions in a minute, but let me turn it over to Congressman Wise at this time for questions he may have.

Mr. WISE. I appreciate your testimony. My question would be, at this stage, how much would you estimate has been spent by EPA in its many attempts to clean the Minden site?

Mr. Rose. Around \$6 million.

Mr. WISE. And have they attempted to recover anything from the

Shaffer Equipment Company?

Mr. Rose. They have settled recently a partial lawsuit in Judge Hallanan's court in Beckley, the Federal District Court in Beckley, WV; and the amount, it was very small, which was awarded to the I think Berwin Land ended up having to pay maybe \$200,000; and the Shaffer Equipment Company, which now is bankrupt-however, Mrs. Shaffer and her son George do have large land holdings-they had to pay very, very small amounts of funds, too. I do not believe that John Hopkins University had to pay hard-

ly anything whatsoever.

I mean they have not recouped hardly any of their funds, you know, whatsoever. And one of the main things that really hurt the EPA's case was the situation with Bob Caron. Because once they found out that, you know, Bob Caron-you know, he was the hot shot, the top dog, on-site coordinator for Region 3. I mean, you know, I was shocked when we were having the Persian Gulf War, I was sitting there watching TV and there is Bob getting off a plane in Kuwait to go put the fires out. And you know here I am saying how can he put the fires out when he can't even deal with Minden, you know?

And then we find out that he had no credentials. And he helped send a man to prison in Maryland. Finally, he was convicted in the State of Maryland for perjury, and I do not know exactly, you know, what the settlement was, what actually has happened to Bob Caron. He was forced to resign from the EPA. However, his coworker, Steve Jarvala, did the internal investigation on his data.

Now, this man did-oversaw all the technical data on Minden which kept us off the National Priority List. We missed the National Priority List by 0.5. The score is 28.5. Now we missed it by 0.5, based on Bob Caron's data, and the EPA upholds that data today. Now we say that we want a total new investigation, that we do not trust, you know, the people that are in power right now in Region 3. The people in Region 3 are old holdovers from the Reagan years. And, you know, a lot of these people need to be re-

There needs to be a real investigation on what has happened and what the cover-up really is. But that still doesn't, you know, solve or resolve the fact that we got to get the people out of there, we

got to get them health care.

Mr. WISE. Well, I think—excuse me. I think you make a very good case, on the health care part of it particularly. I have been involved in another matter, maybe more than one, not with Superfund but with toxic cleanups in different situations and also indoor air pollution. And the health care in getting the testing, because you mentioned at that time biopsy, that is a very expensive process. And the testing that you are talking about is very expensive, too, as far as helping people know what they are contending with.

I want to thank you. I apologize, I have some other constituents from home in the office; I am going to have to run. But I want to

thank you very much for being here, adding your voice.

The record right now before this committee, Mr. Chairman, I think we have gotten a number of the sites—between yourself and your district and my district, we have got a number of the sites into the record that need work in West Virginia, and you have certainly made very eloquent testimony here in Washington as to a site that the present legislation certainly isn't addressing adequately and the need to do that with this new legislation.

Thank you very much. Mr. Rose. Thank you.

Mr. RAHALL. Let me add also that perhaps we have some new hope in the EPA now with the new regional administrator for Region 3, himself a former colleague of ours, Bob, and a former Member of this committee, if I am not mistaken, Peter Kostmayer. Oh, Energy and Commerce, I am sorry; okay, he was on Natural Resources Committee with me.

Mr. WISE. But if the gentleman will yield, very knowledgeable on

the issues, was directly involved in the 1986 act.

And I would just note on another matter, I called the new regional administrator, took a while to get him in place, I called him directly on a matter in which we were afraid that EPA would pull out. And I responded quickly, and EPA has gotten back in and in fact asserted themselves much more aggressively than they had before. So my hope is that in dealing with your situation in Minden, as well as some others, that we will see an even more positive attitude, much more positive attitude out of Region 3.

Mr. RAHALL. All right. Let me ask one final question, if I might. I have a letter to me dated February 16th of this year, 1994, from the EPA, in which they say the past file review and recent site visits indicate a need for further action. Do you know what further action it may be that they are contemplating and they are re-

ferring to in this letter?

Mr. Rose. Well, I do believe, Congressman Rahall, that that is what the May meeting was all about, the further action. And the further action that they intend to take at this point is to seal the site. Build the fence, build drainage ditches, tear the Shaffer Equipment building down. And that is basically what they intend to do. They do not at this point—they do not, I do not believe, intend to take any more soil, contaminated soil, out of Minden; and they are just saying that the site is too hot, and they just can't dig down so far. And so I think that is the further action that they are really taking. And that is just inadequate. I mean that is just not fair.

Mr. RANDALL. But first they said they are going to study the site, see, can it be sealed. That is what I am trying to understand, how can they seal the site? They says, be a study on it. Didn't say how long, I assume, you know. I don't think they never seal it, that PCB.

Mr. ROSE. They will be coming in, like I said, about in mid-August. They are going to take some more soil samples, and at that

point we should know more about, you know, their plans to actually seal the site. I am hoping that you might be able to, you know, discuss this with the regional director or Carol Browner; and we do have a letter that President Clinton wrote to Carol Browner, and he asked her to take a look into the situation. And I want to thank Senator Bob Holliday for doing that. You have a copy of those correspondence.

Mr. RAHALL. Right.

Mr. Rose. Which I am hoping that this may, you know, instigate further action, you know, further investigation and, hopefully, an equitable situation for the people of Minden. Because as far as the EPA's credibility throughout the State of West Virginia and throughout Appalachia and the South, they have no credibility; neither does the ATSDR—I mean, because they have just stood up and they have lied to people. And, you know, they really do; and

you know, we have these guys on, you know, videotape.

And one—probably one of the best things that ever helped our group was when Dr. Weisbarger from the CDC, and he is their chief toxicologist even today. He came to Minden and he told everybody that they could eat the dirt, you know, with a spoon, and it would be okay. And then he laughed at the people. And he laughed at poor people. And, you know, when you treat people like that, you really unify them. And they realized that, you know, because just because someone does not have a Ph.D. or a college education, you know, they should not be treated with any less dignity than some other person. So, you know, they have treated, you know, a lot of our people with no dignity, have been very callous, and just been out and out untruthful.

Mr. RAHALL. Larry, Lucian, thank you very much. You both have

done an excellent job here today.

Okay, as we conclude, I would ask unanimous consent that the GAO report be made part of the record on the Minden situation at this point as well.

[The information follows:]

1/1/93
FAgille
Tribue
CAKHII



Nearly seven years from the date these barrels of PCB-laden soil were collected and removed from Minden, the controversy over the cleanup has rearred again due to a GAO report.

GAO confirms Minden doubts

By Teresa Swartz Roberts staff writer

A U.S. General Accounting Office (GAO) investigation into the U.S. Environmental Protection Agency cleanup of PCBs at Minden casts serious doubts on the integrity of the agency's handling of the project, says a congressman.

"In my view, the EPA has paid lip service to the concerned citizens of Minden, and its entire review process has been a sham," U.S. Rep. Nick J. Rahall said.

The EPA conducted three

The EPA conducted three cleanup projects at the Minden Shaffer Equipment Co. site since 1984, but Concerned Clitzens to Save Fayette County believe the area still contains hot spots, threatening their health and the lives of their children.

Meanwhile, the on-site coordinator of the cleanup projects, Robert Caron, pleaded guilty to lying about his credentials during federal court proceedings.

ing federal court proceedings.

The EPA conducted a review of his management of the Mindem project and found no problems.

But the GAO investigation found that Caron's deputy project officer was the EPA official who conducted the review.

who conducted the review.

"What's more, the same deputy is serving as the new onsite coordinator, for the Minden project.

and Concerned Citizens to Save Fayette County, including a former Shaffer employee. The GAO also visited the Shaffer site and examined documents.

1

"I think it is clear that we not going to get satisfaction from the current leadership at the EPA. This will be a matter that I will raise with the incoming Chuton administration and the new EPA officials," said Rahall.

The five-page GAO report, signed by Director Richard C. Stiener, does not offer suggestions on handling the situation, nor does it draw any conclusions.

Instead, the GAO reports its findings through interview with officials of EPA Region III, Department of Justice, Agency for Toxic Substances and Disease Registry, West Virginia Department of Health, West Virginia Department of Natural Resources,

Jan. 11, 1953

'Citizens' to continue fight

The chairman of Concerned Citizens to Save Fayette County says the General Accounting Office (GAO) investigation into the Minden cleanup may be the catalyst the group has been looking for to force the Environmental Protection Agency to return, especially since it may indicate that an EPA official lied to the GAO

It's going to validate our conjecture that the EPA did do a cover-

up," said Larry Rose.
"I think it's going to get pretty deep," he added, saying that layers of alleged abuse by the federal agency will be discovered in the

long run

The GAO did not assess the EPA internal investigation nor the cleanup itself, except to disclose that the current on-scene coordinator conducted the EPA's internal review of Bob Caron's management of the site after he had served as Caron's deputy project officer.

Caron resigned from the EPA while pleading guilty to falsifying

his credentials in federal court.

The new coordinator, who was not named in the report, expressed no knowledge of several key issues Concerned Citizens has raised.

I'm telling you that this on-site coordinator lied to the GAO," said Rose, on information surrounding a pit into which PCBs were dumped or that Shaffer may have sold contaminated oil to the people of Minden to heat their homes.

U.S. Rep. Nick J. Rahall (D-W.Va.) spokesman Jim Zoia says he

can see Rose's point.

"I must admit, it surprised me. How can you be on-site coordina-

tor and have 'no knowledge' of these things?

The new coordinator is also in charge of the quality control review that is so far rejecting soil samples taken by Concerned Citizens because of sampling procedures Rose says were by the book.

"They should come down and refute our sampling," Rose said. Rose contends the EPA has given Minden citizens the runaround from the beginning

He believes that the federal government could have spent the \$5 million used in the cleanup to relocate the citizens of Minden.

"I think that we've been right for the last eight years," Rose said. "They bungle up and they cover up.

Rose says that the group will continue its efforts, with the possible hiring of an attorney to file a civil suit on behalf of children affected by Minden PCBs.

In addition, Rose is proposing a state legislative resolution ask-

ing the federal government to buy out Minden. Sen. Robert K. Holliday acknowledged he would be willing to support such a resolution "to draw attention to the terrible chemical problem that's been there.'

But Holliday says more study would be needed before drafting a

resolution. He declined to get more specific.

"There certainly would have to be an awful lot of footwork with the resolution," he said.

The state cannot afford to pay the residents for relocation, he said

"But the federal government has its own problems, too."

Bob Reeves, a Lexington, Ky. environmental attorney is exploring a possible case against what Rose calls "the injuring parties" on behalf of the Minden children.

The statute of limitations is protracted for children as related to adults in the state of West Virginia," Rose wrote in a recent meeting

agenda.

A local physician has agreed to help distribute health register information through his Oak Hill office, says Rose.

Mr. Rose. Okay. I would like to submit this information.
Mr. Rahall. Yes, all that has already been granted permission.
Okay, the Subcommittee on Water Resources stands adjourned.
[Whereupon, at 2:49 p.m., the subcommittee was adjourned.]

PREPARED STATEMENTS OF WITNESSES

U.S. House of Representatives

Committee on Public Works and Transportation

Subcommittee on Water Resources and Environment

Testimony

of

John G. Arlington

on behalf of the

Superfund Improvement Project

of the

American Insurance Association

July 14, 1994

(547)

The American Insurance Association ("AIA") is a trade association comprised of 254 insurance companies which write a large percentage of the commercial property and liability insurance sold in the United States. AIA is vitally concerned about the efficiency and effectiveness of the current Superfund law, as well as its financial implications for property/casualty insurers, other affected industries, and the American economy as a whole. We appreciate the opportunity to present our views today as the Subcommittee considers H.R. 3800, the Administration's Superfund reform bill.

In the extensive hearings conducted on Superfund by the Subcommittee on Investigations and Oversight, AIA testified on the necessity for reform of the Superfund retroactive liability system. In that testimony we set forth a brief history of Superfund and described in detail the unintended, but very expensive, wasteful, and counterproductive effects of Superfund's retroactive liability system. We stated unequivocally at that time that the simplest and most direct way to address the most serious flaws in the current Superfund liability system would be to eliminate retroactive liability for waste legally disposed of prior to the enactment of Superfund.

We are greatly encouraged by the fact that the Administration has recognized the importance of the insurance industry's Superfund problem and attempted to solve that problem with Title VIII of its proposed legislation (H.R. 3800 and S. 1834).

While Title VIII was a necessary first step toward initiating further debate, in the form in which it was introduced it does not come close to achieving its two most important objectives: resolving 80 to 95 percent of Superfund-based insurance claims -- and doing so at a cost which is fair and affordable to the insurance industry. Therefore, Title VIII of the bill in its original form is simply unacceptable to the insurance industry.

The enormity and importance of the Superfund problem demands extraordinary efforts to arrive at a satisfactory solution. Moreover, we have often stated that we would remain open to creative alternatives to the elimination of retroactive liability. Thus, we have worked hard with non-insurers, including members of the business community and representatives of the Administration, in trying to develop a workable solution that will eliminate the vast majority of Superfund-based insurance claims, while imposing on insurers and insureds costs which are fair, affordable, and predictable. We believe that a workable compromise has now been reached.

On May 18 the Committee on Energy and Commerce reported out H.R. 3800 with substantial amendments, including significant revisions to Title VIII. Although not yet perfected, AIA supported the Energy and Commerce action on the bill.

On June 14, the Senate Subcommittee on Superfund, Recycling and Solid Waste

Management of the Senate Environment and Public Works Committee reported out S. 1834
incorporating the Energy and Commerce Committee amendments with further refinements to
the amendments to Title VIII. AIA strongly supports the amendments made by the Senate
Subcommittee.

In the remainder of our testimony we will briefly summarize how the insurance industry came to be involved in Superfund and why Superfund has become such an enormous problem. Then, turning to Title VIII of H.R. 3800, we explain our conclusion that Title VIII is unworkable in the form in which it was originally introduced and would actually make the situation worse for insurers. We then review efforts by the Coalition on Superfund, a broad-based coalition of chemical companies, manufacturers, and insurers, to develop a workable solution to the insurance problem, based on the core concepts contained

in the Administration's proposal. Finally, we conclude with a summary of the refinements made by the Senate Subcommittee and why they are essential.

INSURANCE INDUSTRY INVOLVEMENT IN SUPERFUND

The insurance industry was brought into the Superfund liability quagmire by potentially responsible parties ("PRPs") facing liability for cleanup of old waste sites.

Insurers are involved in two different ways.

First, as PRPs are notified of their potential liability or are assessed their share of cleanup costs, many have claimed that liability for their past hazardous waste management practices is covered under old insurance policies in effect at the time the waste was disposed of at the site. Insurers believe that these old policies do not cover Superfund cleanup. These PRP law suits, however, threaten to expose the industry to multi-million dollar claims. The result is time-consuming, expensive insurance coverage litigation that forces both PRPs and insurers to spend large sums of money on more lawyers and consultants.

The second way insurers are involved in Superfund disputes is in the defense of PRPs. While reserving the right to later have the coverage issue resolved, insurance companies often defend their PRP policyholders against claims the policyholder contends are covered by the insurance policy. Thus, insurers frequently wind up doubly involved in Superfund litigation. This also fuels the litigation fires: the PRPs lawsuits against the government and other parties are "free" to the PRP -- paid for by the insurers -- as the PRPs try to reduce their own exposure.

All levels of the state and federal judicial system are currently occupied in the interpretation of insurance policies, often written years or even decades before the enactment of Superfund. There are a number of specific issues of contention which make this litigation

extremely complex. Our purpose in mentioning the coverage litigation is not to delve into these issues, or to give the insurance industry's perspective on them, but simply to underscore the unsettled nature of the law with respect to insurance coverage, and the concomitant uncertainty about the potential effects of Superfund on property/casualty insurers. Most legal experts believe it will take many years for all of the issues involved in the coverage litigation to be resolved. Moreover, even after all of the legal issues presented by the coverage litigation are resolved, we will still be litigating for years over the application of the facts in each case.

How much money is wasted on insurance-related transaction costs? Transaction cost information for the private sector has been difficult to assemble, largely because of the diverse number of parties, and the lack of site-specific accounting. In the most authoritative study so far, a 1992 study by Rand, it was reported that average transaction costs associated with insurance claims paid under Superfund were 88 percent of total costs. Even on closed claims, transaction costs averaged 69 percent, more than double the average for other general liability claims. Rand found that insurer transaction costs were running at \$400 million per year for all waste cleanup claims. Transaction cost expenditures for PRPs must be at least equal to that figure.

The bottom line is this: the insurance coverage litigation will continue to result in hundreds of millions of dollars in unproductive, wasteful expenditures for years to come unless serious reform is adopted during this reauthorization of Superfund.

THE ADMINISTRATION'S PROPOSAL (TITLE VIII OF H.R. 3800)

Summary of Title VIII

The Administration's Superfund reform proposal, introduced as H.R. 3800, leaves the current retroactive liability system unchanged. However, it would superimpose two kinds of liability-related reforms on the current liability system.

First, Superfund cleanup costs would be allocated among PRPs using a new allocation system, set out in Title IV. In our testimony before the House Subcommittee on Transportation and Hazardous Materials on February 10, we commented on our misgivings about the non-binding nature of the Administration's cost allocation proposal, as well as other significant defects. We think the allocation process proposed in Title IV will require much improvement before it will succeed in reducing litigation.

Second, in an attempt to eliminate a large part of the current insurance litigation, Title VIII would establish an "Environmental Insurance Resolution Fund", financed by a "fee" paid by the insurance industry, which would reimburse PRP claims for insurance coverage for waste disposed of prior to 1986. (For waste disposed of in 1986 or later, this insurance claims process would not apply.)

Briefly, here is how the system would work:

- A new Environmental Insurance Resolution Fund ("EIRF") would be created to handle claims for insurance coverage for the cleanup of pre-1986 waste.
- The Fund would be financed by a fee paid by insurers that would raise, depending on the Fund's needs, \$2.5 to \$3.1 billion over the first five years.

- PRPs would be required to place a claim with the Fund for reimbursement of their cleanup costs before they may sue their insurers.
- PRPs making a claim must prove they have insurance, by a minimal test (seven years
 of "comprehensive general liability" insurance or "commercial multi-peril" insurance
 in any 14 year period).
- Insurance policy limits are not considered, so long as a threshold of \$15 million in available limits is exceeded. Demonstrable limits below \$15 million set a lower ceiling for eligible costs.
 - -- The Fund may reimburse "eligible costs":
 - Cleanup costs at NPL sites
 - Natural resource damages
 - Costs of removals required by CERCLA at NPL and non-NPL sites
 - Superfund-related defense costs
 - Insurance policy limits will not be considered.
- The Fund offers a settlement of either 20, 40, or 60 percent of a PRP's claim, depending on the likelihood of the PRP recovering from insurers in the relevant state courts.
 - The Fund's trustees will determine by rulemaking which states fall into which category, based on the court decisions on insurance coverage in each state as of January 1, 1994. Those states with court decisions generally favoring insurers will be in the 20 percent category; those favoring PRPs in the 60 percent category; and those states whose courts have not yet decided the issue will be in the 40 percent category.

- -- In general, the question of which percentage category a PRP is in for purposes of the settlement offer will be determined by the following:
 - In the case of a PRP who has filed a lawsuit against its insurers prior to
 December 1, 1993, the Fund's offer will be based on the category for
 the state in which the lawsuit is pending, regardless of where the PRP's
 Superfund sites may be located.
 - In the case of all other PRPs, the Fund's offer will be based on the category for the state in which the PRP's Superfund site is located, or if more than one site, an average of the percentages applicable to those sites. PRPs who accept the Fund's offer give up the opportunity to sue their insurers.
- PRPs who do not accept the offer from the Fund may sue their insurers, just as they do now. However, the defendant insurers will be indemnified up to the settlement amount that was offered by the Fund.
 - For example, if the Fund offers \$60 million and a court subsequently awards \$100 million, the Fund will still pay \$60 million, and the defendant insurers will pay \$40 million. If the court awards \$35 million, then that is paid by the Fund, and the defendant insurers pay nothing more. Recovery of insurer coverage litigation costs would also be allowed in the latter case, but no more than the difference between the fund offer and the final award.
 - A small penalty is provided to encourage PRP participation: A PRP who optsout is subject to fee-shifting of up to 20% of the fees incurred by the insurer in coverage litigation after the fund's offer is rejected.

- The Environmental Insurance Resolution Fund and the insurance fee would be authorized for five years and would automatically expire if not reauthorized.
- The insurance fee would raise \$2.5 billion (\$500 million per year) over the five years of the authorization. The fee would increase to a maximum of \$3.1 billion for the five-year period if it becomes apparent that there are insufficient funds available. Thus, the fee would raise \$500 million in the first year, \$500 million in the second year, and, if there were insufficient funds available, would increase automatically to \$700 million in each of the remaining years.

The Need for a Workable Solution

The Administration has proposed a very unique approach to resolving the insurance Superfund litigation. However, despite this serious attempt at a solution, we find Title VIII of the current bill is simply unworkable and unacceptable as introduced. A brief look at the evolution of this proposal gives some insight into the difficulties it presents in its present form.

The idea of creating an independent facility to resolve Superfund insurance claims arose from efforts begun last Fall by a handful of insurers and industrial companies to come up with an imaginative solution to the insurance litigation mess. These efforts centered on a "Hybrid" idea offered by the representative of a large industrial company. Under the Hybrid, the insurance industry would pay an annual contribution to an insurance fund, which in turn would pay a uniform fixed percentage of the cleanup costs at all Superfund sites. In exchange for this insurance contribution, no insurer would be liable for defense or indemnification of any Superfund cleanup costs. Under the Hybrid, participation by all PRPs and insurers would be mandatory. And the insurance litigation would simply be ended.

The Hybrid provoked a great deal of interest in the industrial community. It was not difficult to understand how both PRPs and insurers would benefit from the "hybrid" proposal: (1) The PRPs would receive the certainty that a percentage of the waste cleanup costs at each site would be paid by insurers; (2) both PRPs and insurers would have eliminated the enormous transaction costs now incurred by insurance coverage litigation; and (3) insurers would obtain the financial certainty of a regular annual tax, instead of uncontrollable, unquantifiable litigation risk.

White House officials and others in the Administration became deeply interested in the Hybrid as a possible way to defuse the controversy over the Superfund retroactive liability system. They objected, however, to one crucial feature of the Hybrid: its mandatory nature. As a result, they sought to develop a "voluntary" system for resolving the insurance litigation.

Early in January the Administration began convening a small group of private sector companies to work on a voluntary system. AIA appreciated being asked to participate in these meetings, despite our misgivings about the Administration's ground rules and time limits. This small group devised the outlines of Title VIII in about two weeks of intensive and chaotic work. The result was a proposal which amounted to a "first step," useful as a basis for further review and negotiations. This is not a surprising outcome: the time allowed had been too short to permit adequate analysis and the ground rules did not permit wide-ranging innovation.

Following intensive analysis of the Title VIII provisions as they were introduced, AIA concluded that the bill as drafted was unworkable and unacceptable. In short, we are

convinced that in the form in which it was originally introduced the bill would not achieve its primary objectives: it would not eliminate 80 to 95 percent of the insurance litigation and it would not be fair and affordable to the insurance industry.

WHY TITLE VIII IS UNWORKABLE AS INTRODUCED

To facilitate understanding of Title VIII and its major deficiencies, we have divided our analysis into three main parts: the voluntary nature of the system; the rules for developing offers to the PRPs; and the authorization and funding of the EIRF. For each of those parts, we summarize the provisions of Title VIII and then identify and discuss the issues raised by those provisions.

A. Voluntary Participation for the PRPS

The Current Provisions of Title VIII:

PRPs must request a settlement offer from the EIRF before they may sue their
insurers. However, participation in the EIRF is voluntary, i.e., a PRP may either opt
to accept the offer from the EIRF or reject the offer from the EIRF and file (or
resume) a lawsuit against its insurer (just as PRPs are permitted to do under the
current Superfund liability system).

Problems Presented by the Voluntary System:

The Administration and some PRPs have been unwilling to agree to a mandatory EIRF process, i.e., one in which all PRP claims must be settled by the EIRF. Yet for the insurers, a voluntary system does not provide the necessary assurance that enough PRPs will "opt-in" to the system so that 80 to 95 percent of the insurance litigation will in fact come to an end.

To put it another way, if only half of all eligible PRPs elect to participate in the EIRF process, the insurance litigation will still continue at full speed ahead, since the insurers will still have to defend thousands of lawsuits in all fifty states. Worse still, those who opt-out of the EIRF system can be expected to be those PRPs who think they have the strongest cases, have their lawsuits in a particularly "favorable" state court, or who perhaps are simply opting-out for unquantifiable reasons. Thus the EIRF would resolve only weaker cases, at generous payment levels.

The voluntary nature of Title VIII could leave the insurers with all the same enormous expense, waste, and uncertainty that we have now -- but we would have the added burden of a \$3.1 billion assessment on our industry. Obviously, this is an unacceptable outcome, which we must and will vigorously oppose.

The Administration has been reluctant to propose a mandatory EIRF system, hinting that it could be unconstitutional. In response to that objection, we provided an analysis by Mr. William T. Coleman, Jr., a copy of which was provided to this Subcommittee. Mr. Coleman concluded that a mandatory system would not be unconstitutional, on either due process grounds or as a "taking." We understand that the Department of Justice has not done a written analysis of this issue.

The voluntary nature of Title VIII also has not been overcome by the addition of a "disincentive" to PRPs who reject the EIRF process and resume lawsuits against their insurers. The requirement in Title VIII that a PRP who loses its lawsuit against its insurers must pay 20 percent of the insurers' fees and costs is minimal: in the typical Superfund coverage suit, with millions of dollars at stake, this penalty would not deter anyone from suing. Moreover, it is only a fraction of the penalty that is available right now under Rule

68 of the Federal Rules of Civil Procedure, which allows recovery of 100 percent for litigants in Federal court.

As a practical matter, simply requiring the losing PRP to pay all or part of the insurer's litigation fees will not, in itself, deter many lawsuits. Something more will be necessary.

B. Payment of Insurance Claims

The Current Provisions of Title VIII:

- The Fund offers a settlement of either 20, 40, or 60 percent of a PRP's claim, depending on the likelihood of the PRP recovering from insurers in the relevant state courts.
- 2. The EIRF may reimburse "eligible costs":
 - a. Cleanup costs at NPL sites
 - b. Natural resource damages
 - c. Superfund required removal costs at NPL sites and non-NPL sites
 - d. Superfund-related defense costs

Problems Presented:

Our major objection to these provisions is that, taken in combination, they will result in grossly inflated payouts from the Fund -- payouts which are beyond all current or anticipated experience and without regard to actual insurance coverage and policy limits.

Revisions to these parts of Title VIII must focus on placing more reasonable limits on the ultimate payouts from the EIRF, recognizing two major points: (1) percentages which are unrealistically low will result in large numbers of PRPs opting out of the EIRF; and (2) it does neither the PRPs nor the insurance industry any good if the funds in the EIRF are depleted because payouts are unrealistically high.

That being understood, major issues which must be addressed include the following items.

1. Policy limits and deductibles:

- a. PRPs seeking an offer from the EIRF must first show all of their applicable insurance policies in order to establish that they had insurance for the applicable period and to establish the amount of their policy limits.
- The deductibles and SIRs (self-insured retentions) applicable to these
 policies should be subtracted.
- c. Occurrence policies must be defined and limited.

Windfall claims:

- a. Claims which normally would not have been paid, either because they were filed too late or are dormant, should not be paid by the EIRF.
- b. Claims for cleanup costs arising from actions that resulted in a criminal conviction should not be paid.

Venue:

The current provisions of Title VIII determine the percentage offer from the EIRF based on where the insurance coverage suit has been filed. As a practical matter, whenever possible, large PRPs have filed their suits in states they believe have laws favorable to them, regardless of where the Superfund

sites included in the lawsuit are actually located. The Administration's bill unrealistically rewards this forum shopping. The insurers believe that the percentage offers from the EIRF should be based on where the Superfund sites are actually located, not where the lawsuits have been filed.

Owned Property:

The insurance policies at stake in Superfund coverage litigation do not cover pollution resulting from activities at sites owned by the policyholder. The insurers have a very high rate of success in court with this "owned property" defense. Thus, the percentage offers made by the EIRF should be lower for Superfund sites which constitute "owned property" to better reflect the amount a PRP could reasonably expect to receive for these sites.

Assignment of States to Percentage Categories:

The Administration's bill directs the EIRF Trustees to assign states to the percentage categories, with the 10 states where coverage law is most favorable to insurers in the 20% category, the 10 states where the coverage law favors PRPs in the 60% category, and the balance in the 40% category. However, leaving this determination to the Trustees without any criteria or other guidance, will produce enormous uncertainty. In fact, it makes it virtually impossible for business to assess the value of Title VIII. Criteria for categorizing the states must be inserted in the bill.

6. One Set of Rules at Superfund Sites:

Superfund costs covered by this proposal should be subject to the CERCLA

liability system and no other. We are concerned that state laws could be used to circumvent the EIRF.

Amortization of Past Costs:

Under the current bill, EIRF payouts for cleanup costs incurred prior to creation of the EIRF are paid out over 8 years, with no interest accruing. We believe that a more reasonable period is 10 years.

C. The Authorization and the Insurance Fee

Although this hearing is limited to the first eight titles of the bill, there are points at which some of the organizational concepts of Title VIII can be best understood by also considering the insurance fee that would be established by Title IX, which was referred to the Committee on Ways and Means.

The Provisions of Title VIII and Title IX:

- The EIRF would be financed by a fee paid by insurers that would raise \$2.5 billion (\$500 million per year) over the five years of the authorization. The fee would increase to a maximum of \$3.1 billion over the five years if it becomes apparent that there are insufficient funds available.
- The EIRF and the insurance fee would be authorized for five years and would automatically expire if not reauthorized.

Problems Presented:

We will reserve for another forum our comments on the mechanism for collecting the insurance fee. Relevant to this hearing, however, is the question of how to deal with

ensuring that the EIRF has adequate resources and time available to carry out its duties without causing the insurance litigation to start all over again.

- Ten-Year Authorization: The EIRF should be authorized for 10 years to give
 it a chance to work.
- 2. Stretch-out of Past Costs and Risk Sharing:
 - a. If the EIRF experiences greater demands for payouts than it is able to satisfy with existing revenues, the EIRF should be authorized to stretch-out the payment of those costs over a period of years, rather than become insolvent.
 - b. In recognition that there may be a demand-bulge in years 6 to 10 or later requiring the stretch-out of payments, the insurance tax could be increased in specified annual increments, if the Secretary of Treasury found it necessary to enable the EIRF to meet its obligations.
 - c. To avoid shutting down the EIRF, if these amounts prove inefficient, the fund would be required to schedule payments to the PRPs rather than pay them immediately.

THE COALITION ON SUPERFUND and THE POLICYHOLDER'S COALITION

Due to the great importance which we attach to achieving Superfund reform, we have attempted to work with all stakeholders to further develop this unique idea and to do everything possible to make it a practical solution to the Superfund problem. To that end, we have been engaged in very intense discussions with a broad group of chemical, manufacturing, and insurance companies hosted by the Coalition on Superfund. We have

retained a member of a prominent law firm, experienced in Superfund issues, to mediate and facilitate these discussions.

This is a much broader group than that which took part in discussions with White House staff prior to introduction of H.R. 3800, and, thus, to some extent our discussions have been more sweeping, more lengthy, and, yes, at times more combative. But, the same thing which makes these discussions more penetrating and more combative has also made them more candid. And that has been for the good.

We have made serious, substantial progress in resolving the major issues to which we have alluded in this testimony. Pressed by the Congressional schedule, we have worked day and night to seek a resolution of this matter. For our part, this effort has involved managers at the very highest levels of our companies.

I am happy to say that this intense effort was successful. We have reached agreement on all of the core issues. Moreover, we subsequently conducted negotiations with the Policyholders Coalition, a loosely knit group of PRP companies concerned about shortcomings they saw in Title VIII. These negotiations were also successful.

The result is the broad coalition of PRPs and insurers testifying today.

The agreements reached in these important negotiations were most recently adopted by the Senate Subcommittee on Superfund and are summarized below. We emphasize that AIA regards the adoption of these amendments by the Senate Subcommittee on Superfund as essential to making this legislation workable.

1. The 85% Opt-in Threshold:

The Coalition has agreed in principle on a very significant advance toward protecting the insurers from possible adverse selection. Under this proposal, the EIRF would not begin to operate until 85 percent of all existing PRPs have made a decision to accept the EIRF's offers. If at least 85 percent of all PRPs who have active claims or litigation pending against their insurers (weighted to ensure that at least 85 percent of the large PRPs are included in this figure) do not accept the EIRF offer, then the EIRF will go out of existence and the present liability system will resume. If the EIRF goes out of business because the 85 percent threshold is not met, the insurance fees will be refunded to the insurers, minus the administrative costs of the EIRF.

2. Disincentives to Opting Out:

PRPs who reject the EIRF offer and are unsuccessful in subsequent litigation against their insurers will pay 40 percent of the fees and costs of the insurer defendants, but capped at an amount equal to 160 percent of the PRP's fees and costs.

3. Policy limits and deductibles:

- a. PRPs seeking an offer from the EIRF must first show all of their applicable insurance policies. The limits of these policies will be added together ("stacked") to establish their total limits.
- b. The deductibles and SIRs applicable to these policies will also be stacked and then subtracted from the total limits. The remainder will be the PRP's limits for EIRF payouts and cannot be supplemented later.

- c. All deductibles and SIRs will be averaged and that average subtracted up-front on a one-time basis from whatever payouts the PRP receives from the EIRF.
- d. Occurrence policies will be limited to one occurrence per site.

4. Windfall Claims:

The EIRF would have the power to "knock out" claims made by PRPs for cleanup costs resulting from criminal activity and claims which have lain dormant.

5. Venue Split for Calculating EIRF Offers:

The applicable state percentage will be determined by averaging the state percentage in which the PRP's coverage suit was filed with the weighted average of the location of the PRP's NPL sites. These two elements will be weighted two-thirds and one-third, respectively. Large sites (over \$50 million in remediation costs) which are located in the same state as the venue of the suit related to that site will be counted twice.

6. Owned Property:

Payouts for claims related to sites constituting "owned property" will be reduced by 30 percent, with the deduction capped so that it may not result in a reduction of more than 12 percentage points from a PRP's overall percentage offer.

7. Assignment of States to Percentage Categories:

The PRPs and the insurers have listed the states by the status of their coverage rules and assigned the states to their respective categories. The states in each percentage category will be listed in the bill.

8. Amortization of Past Costs:

EIRF payments for past costs will be amortized over 10 years, with interest beginning from the date of enactment for sites which are now subject to coverage litigation or arbitration.

9. Ten-Year Authorization:

The EIRF would be authorized for 10 years and the "Sunset" provision in the current Administration bill eliminated.

10. Stretch-out of Past Costs and Risk Sharing:

If the EIRF experiences greater demands for payouts than it is able to satisfy with existing revenues, the EIRF may stretch-out the payment of those costs over a period of years, rather than become insolvent. In recognition that there may be a demand-bulge in years 6 to 10 or later requiring the stretch-out of payments, the insurance tax may be increased in years 6 to 10, by \$100 million increments per year, up to a maximum of \$1.2 billion. To avoid shutting down the EIRF if these amounts prove insufficient, the Fund would be required to schedule payments to the PRPs rather than pay them immediately.

11. The Cooling-Off Period:

The "cooling-off" period during which all insurance coverage litigation would be stayed has been reduced to 60 days after enactment and any court dates and trials that have begun prior to enactment of the bill will not be subject to the stay.

CONCLUSION

The recent negotiations among insurers and PRPs at the Coalition on Superfund and with the Policyholders Coalition focused on resolving the very serious problems presented by Title VIII of the Administration's bill. But there should be no mistake about it: the insurance industry's first preference would have been the original Treasury Department proposal to eliminate retroactive liability. However, we at AIA have long indicated our willingness to work with the Administration and all other parties to develop a practical solution to the Superfund problem.

We believe the compromise we have reached with members of the Coalition on Superfund is a workable alternative. We urge that everyone give this compromise a careful and thoughtful review. But it is important to remember: if we really want to solve this problem, we will have to do so using this new template.

We appreciate the opportunity to appear before this committee today as it considers these very important issues. We have come a long way and we have a long way to go. We look forward to continuing to work with the members of this committee and with all Superfund stakeholders to enact these essential reforms.

TESTIMONY OF:

RICHARD A. BARTH Chairman, President & CEO Ciba-Geigy Corporation 444 Saw Mill River Road Ardsley, New York

BEFORE THE:

WATER RESOURCES AND ENVIRONMENT SUBCOMMITTEE PUBLIC WORKS AND TRANSPORTATION COMMITTEE UNITED STATES HOUSE OF REPRESENTATIVES

"Superfund Reform Act of 1994 - H.R.3800"

July 14, 1994

Introduction

Thank you Mr. Chairman and members of the Committee for the invitation to appear today to discuss the unique opportunity to achieve comprehensive reform of the Superfund program through H.R.3800.

Many disparate groups agree that the Superfund law is in need of an overhaul and are urging the passage of H.R.3800. Although support for H.R.3800 is not universal, it does enjoy support from a group I'd describe as representing a critical mass of industrial, insurance and banking sectors, the environmental community, and local and state governments.

Background on Ciba

Since Ciba isn't exactly a household name, I'd like to start by offering a brief sketch of who we are. Ciba-Geigy Corporation is a wholly-owned subsidiary of Ciba-Geigy Limited located in Basel, Switzerland. In the U.S., we have over 16,000 employees primarily engaged in the research and development, manufacture and sales of health care, agricultural and industrial chemical products. Our manufacturing plants and facilities are situated throughout the country.

Our U.S. business represents about one-third of the world-wide Ciba enterprise. In 1993, we had sales of \$4.5 billion. We manufacture in the U.S. over 80 percent of what we sell in the U.S.

We have become, as many multi-national companies, increasingly globally integrated in our manufacturing operations, and as part of a global enterprise, we have also become a significant exporter from the U.S. of manufactured goods. Our U.S. based plants are globally competitive.

Guiding all of our world-wide operations is an operating philosophy called VISION 2000 which gives equal weight to our economic, environmental and social responsibilities.

Ciba's Superfund Experience

We are actively involved at a number of Superfund sites, some company owned, others operated by third parties. Our involvement stems from waste disposal practices, some of which date back almost half a century, and all of which were legal, permitted and often times, state-of-the-art practices.

While we have carried out our obligations under the present difficult Superfund law in a constructive non-contentious manner, we believe that comprehensive changes in the law are necessary so that Superfund results in cleanups that protect human health and the environment in a cost-effective way.

Superfund is in need of reform today, not tomorrow. We are presently spending at an annual rate of \$60 million on Superfund. Since 1986, we've spent approximately \$350 million. That figure covers actual cleanups, the preparatory engineering and design work and considerable transaction costs which have included litigation expenses incurred over issues having to do with joint and several liability.

Not included in this figure are heavy litigation costs which we have, and will continue to incur, over issues having to do with insurance coverage.

We believe a significant part of these outlays can be reduced without any compromise in protection of human health and the environment.

Superfund Reauthorization Consensus

Ciba is a member of Advocates For Prompt Reform Of Superfund, a coalition of 65 likeminded companies, organizations and trade associations that believes H.R.3800 will achieve significant improvements over the present law. The names of those organizations are appended to my written statement.

Toward the goal of advancing comprehensive reform of Superfund in 1994, Ciba has actively taken part in discussions with Administration officials, members of Congress and staff, state and local government officials, our business colleagues and representatives of environmental and community organizations.

For example, when the Energy and Commerce Committee was reviewing Superfund reauthorization, we were invited to actively participate in negotiations on the remedy selection, community participation and environmental insurance resolution fund titles of H.R. 3800.

Our mission has been to be a positive and constructive force to promote progressive reforms and improvements to the Superfund program.

The proposed legislation before the Committee represents thousands of hours of work on the part of affected and interested parties. It reconciles the essential needs of those parties and serves the public at large.

While the process in the Energy and Commerce Committee resulted in a bill that has broad support, I am mindful of the fact that the process must continue to evolve in both this

Committee and in the Senate. I would welcome the opportunity to work with you, Mr. Chairman, and all the members of this Committee in crafting a Superfund bill. Hopefully, the Superfund reform process will continue to enjoy broad support among interested parties so that Superfund can be enacted this year.

H.R.3800 -- Tangible and Measurable Benefits

I will cover four subjects where positive changes will be obtained under H.R.3800: Remedy Selection, Liability, the Environmental Insurance Resolution Fund and Community Participation.

♦ REMEDY SELECTION

This is the compass setting step. H.R.3800 establishes protective concentration levels which will promote prompt and consistent remedies with regard for acceptable risk levels.

Where such protective concentration levels are not appropriate nor feasible, flexibility is retained to permit the establishment of site specific cleanup standards, once again, having regard for acceptable risk levels.

Cleanups today are governed by a patchwork quilt of federal and state requirements often resulting in identical sites receiving different remedies.

Establishment of clear cleanup requirements in the beginning of the remedial process will promote consistency as well as the ability of a party to move ahead on voluntary cleanups.

National cleanup goals will ensure that residents, no matter where they live, achieve consistent and equivalent levels of protection. The bill also makes allowances for site conditions which cannot be feasibly cleaned up with existing technology or, which under defined circumstances, are unreasonably costly.

Ciba alone projects savings in the range of 20-25% under this revised remedy selection process.

◆ LIABILITY

Ciba, like thousands of other parties, has contributed to the creation of Superfund sites. I don't expect that any of us set out to create these sites, but they were created nonetheless.

Therefore, we are prepared to take our fair share of the responsibility in correcting problems where they exist.

Establishment of the fair share allocation system in H.R.3800 will ensure that liability, and

the remedial costs to discharge such liability at multi-party sites, will be equitably distributed based upon relative responsibility for the conditions at the site, thereby correcting past problems where one party absorbed a disproportionate share or all of the cleanup costs.

Small businesses and municipalities will be expeditiously and fairly handled under the new law, and orphan shares will appropriately be handled by the Fund itself.

Litigation over liability shares will, under H.R.3800, no longer delay inordinately the cleanup of Superfund sites. The cost of such litigation, which now accounts for 30 cents of every Superfund dollar spent, will be dramatically reduced.

INSURANCE

The Environmental Insurance Resolution Fund will drastically reduce costly, time-consuming insurance litigation by providing the insured and insurer a practical resolution to their differences.

Ciba has been engaged in a long and costly litigation with its insurers. The Environmental Insurance Resolution Fund provides a mechanism to end this costly and unproductive litigation.

The Environmental Insurance Resolution Fund will provide a mechanism for settlements via a formula which factors in location of sites and the venue of litigation.

I believe the Environmental Insurance Resolution Fund constitutes a pragmatic solution to a very thorny problem.

COMMUNITY PARTICIPATION

Involvement of the community around a Superfund site is provided for at the outset of the remedial decision-making process, thereby providing those most affected with a voice about how and when a site should be remediated.

At Ciba, we have learned firsthand that without proper public participation and support, the remedial process can be delayed for a protracted period of time. This is unfair to the community and will ultimately result in higher cleanup costs for PRPs.

In 1987, before regulations were promulgated for the Technical Assistance Grant program, Ciba issued the first grant of \$50,000 to a local environmental organization in New Jersey to help facilitate their participation in remedial activities at one of our sites. It was through the participation of the community that a groundwater remedy was chosen that all parties could support.

Summation

The aforementioned reforms will, in my view, greatly improve the program.

I think it is fair to say that traditional adversaries, in the spirit of cooperation, have extended themselves to points traditionally beyond their "comfort zones" in an effort to a achieve meaningful reform. But I don't think any have conceded their essential principles, or we wouldn't have the broad-based support for H.R.3800.

The synergy generated by government, businesses (both large and small), environmentalists, community groups, banking and lending institutions - all collectively working together - has resulted in a far better bill than if each of us pursued his or her our own special interests and concerns.

While recognizing the important work this Committee needs to carry out on Superfund reauthorization, everyone is aware that time is of the essence as the end of the session is only a few short months away.

Thus, I urge the Committee to support this unique effort by sustaining the momentum for Superfund reform in this session.

H.R.3800 provides an opportunity to achieve vast improvement of very important issues without any constituency's essential needs being prejudiced.

Mr. Chairman, this concludes my remarks. I'd like to thank you once again for the opportunity to appear here today. I would be happy to answer any questions the Committee may have. Thank you.

ADVOCATES FOR PROMPT REFORM OF SUPERFUND

June 15, 1994

Representative Norman Mineta
Chairman
House Public Works and Transportation Committee
2221 Rayburn House Office Building
Washington, DC 20510

Dear Representative Mineta:

The companies and organizations listed below support the efforts of Congress to reauthorize the Superfund program this year. We all commend and support the position taken by the House Energy and Commerce Committee on May 18th in unanimously reporting out the Superfund Reform Act of 1994. This was a major step towards fixing a program that virtually everyone has determined is broken and in need of substantial reform.

The major and comprehensive efforts at outreach, communication and consensus building that led to the Superfund Reform Act of 1994 represent a precedent-setting enterprise allowing Superfund stakeholders to work together to achieve an important environmental goal in a fair and cost-effective manner. The Superfund Reform Act of 1994 was arrived at through a public, open and time-consuming process that has resulted in a remarkable base of support from the Superfund stakeholder community.

In negotiating the remedy selection and liability titles in this bill, a variety of interests, including industry and environmentalists, large and small business, insurers, local and state governments, communities, the financial community, the Administration and Congress — Democrats and Republicans alike have come together to work cooperatively toward a common goal: faster, better and fairer cleanups. The same consensus approach underlies the other titles of this bill. These groups concluded that the way to fix the Superfund program is through a fair allocation and liability process, a mechanism to address insurance coverage litigation, and a remedy selection process that protects human health and the environment in a thorough yet cost-effective manner. All these provisions are essential and extreme care must be exercised to protect the consensus which underlies them throughout the legislative process.

The lesson of this legislative reform effort is that widely divergent interests can work together to achieve a common goal. The undersigned urge all parties to support the reauthorization process the Energy and Commerce Committee advanced with a unanimous vote last month. We commend the Energy and Commerce Committee on its swift action, and urge similarly prompt action in the Public Works and Transportation Committee sustaining a balanced consensus.

Sincerely.

The Advocates for Prompt Reform of Superfund (member companies and associations listed below)

Actna Life and Casualty

AgriBank

Allied Signal Inc.

American Automobile Manufacturers Association

American Bankers Association

American Communities for Cleanup Equity

American Insurance Association

Amoco Corporation

ARCO

Ashland Oil, Inc.

Associated Builders & Contractors

Association of American Railroads

AT&T

BancOne

Bank of America

The Bankers Roundtable

Bankers Trust Company

Barnett Banks, Inc.

The Boeing Company

B P America, Inc.

Browning-Ferris Industries

California Bankers Association

Chemical Manufacturers Association

Chevron Corporation

Chrysler Corporation

Ciba

Clean Sites

The Dow Chemical Company

DuPont

Environmental Capital Corporation

Equipment Leasing Association

Farm Credit Bank

Farm Credit Bank of Baltimore

Farm Credit Council

Financial Commissioner, State of Montana

First Chicago Corporation

FMC Corporation

General Motors

Hercules Incorporated

Hummelstein Iron & Metal, Inc.

Independent Bankers Association of America

Institute of Scrap Recycling Industries

Lloyd's of London

Massachusetts Mutual Life Insurance Co.

Monsanto Company

Mortgage Bankers Association

The Municipal Waste Management Association National Apartment Association National Association of Counties National Association of Towns and Townships National Federation of Independent Business National Multi Housing Council The National Paint and Coatings Association National Realty Committee National School Boards Association New Butte Mining, Plc Olin Petroleum Marketers Association of America Printing Industries of America Rohm and Haas Company Savings & Community Bankers of America Sparten Iron & Metal Corporation Trail Chemical Corporation Union Pacific Corporation

The United States Conference of Mayors

WMX Technologies

STATEMENT OF MR. RICHARD W. BLISS, ESQ.

ON BEHALF OF THE

NATIONAL PAINT AND COATINGS ASSOCIATION, INC.

BEFORE THE

SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES

RE:

H.R. 3800 - SUPERFUND REFORM ACT OF 1994 JULY 14, 1994 BEFORE THE SUBCOMMITTEE ON WATER RESOURCES & ENVIRONMENT
HOUSE COMMITTEE ON PUBLIC WORKS & TRANSPORTATION
JULY 14, 1994

ON BEHALF OF THE NATIONAL PAINT & COATINGS ASSOCIATION
ON H.R. 3800 - THE SUPERFUND REFORM ACT OF 1994

MR. CHAIRMAN, MY NAME IS RICHARD BLISS. I AM OUTSIDE COUNSEL TO THE NATIONAL PAINT AND COATINGS ASSOCIATION (NPCA). ON ITS BEHALF I WISH TO EXPRESS OUR THANKS FOR THE OPPORTUNITY TO COMMENT ON THE SUPERFUND REFORM LEGISLATION PENDING BEFORE YOUR SUBCOMMITTEE. NPCA MEMBERS INCLUDE OVER 500 MANUFACTURERS OF PAINTS AND COATINGS, AND SUPPLIERS TO THE \$12.3 BILLION PAINT AND COATINGS INDUSTRY.

MANY NPCA MEMBERS HAVE BEEN CAUGHT UP IN THE WEB OF SUPERFUND LITIGATION AND HAVE EXPERIENCED GREAT FRUSTRATION AND EXPENSE IN ATTEMPTING TO FIND WORKABLE AND EQUITABLE SOLUTIONS TO THE CASES IN WHICH THEY HAVE BECOME INVOLVED. IN 1992, NPCA CONDUCTED A SURVEY OF ITS MEMBERS AND FOUND THAT OF THE \$600 MILLION EXPENDED BY THE INDUSTRY ON SUPERFUND RELATED MATTERS, ONLY \$200 MILLION WENT TO CLEANUPS WHILE \$400 MILLION WAS CONSUMED IN TRANSACTION COSTS. OBVIOUSLY, THE EXISTING SYSTEM IS NOT WORKING TO ACCOMPLISH ITS INTENDED PURPOSE OF ENVIRONMENTAL CLEANUP.

IN RECOMMENDING IMPROVEMENTS TO THE SUPERFUND LAW, NPCA HAS FOCUSED PRIMARILY ON THE ISSUES OF LIABILITY ALLOCATION AND SETTLEMENT PROCEDURE. DEALING WITH THESE ISSUES HAS PROVED TO BE AMONG THE MOST INTRACTABLE OF PROBLEMS AND THE MOST WASTEFUL OF RESOURCES. THIS IS ESPECIALLY TRUE WITH RESPECT TO DE MINIMIS CONTRIBUTORS TO A SITE WHO, IN MOST CASES, ONLY WISH TO KNOW WHAT THEIR RESPONSIBILITY IS, RESOLVE IT, AND GET BACK TO BUSINESS. WHILE OTHER MATTERS ADDRESSED BY THE LEGISLATION ARE EXTREMELY IMPORTANT AS WELL, UNLESS AN EQUITABLE AND EFFICIENT MEANS FOR STIMULATING THE RESOLUTION OF ALLOCATION DISPUTES IS INCORPORATED INTO THE LAW, CLEANUPS WILL CONTINUE TO TAKE A BACK SEAT TO CONFRONTATION.

THE PUBLIC EXPECTS BETTER, BUSINESS (ESPECIALLY SMALL BUSINESS) NEEDS BETTER AND THE ENVIRONMENT DESERVES BETTER.

ON DEALING WITH ALLOCATION PROBLEMS, NPCA DID NOT FOCUS ON ATTEMPTING TO MODIFY OR REPEAL STRICT, JOINT AND SEVERAL LIABILITY, EVEN THOUGH THESE LEGAL ENFORCEMENT WEAPONS ARE EXTREMELY DIFFICULT TO ACCEPT FOR NON-NEGLIGENT ACTIONS WHICH WERE LEGAL AT THE TIME AND, IN SOME CASES, MANDATED BY PUBLIC AUTHORITY. WE DO FEEL THAT A BETTER APPROACH IS TO PLACE STRICT, JOINT AND SEVERAL LIABILITY IN ITS PROPER CONTEXT: THAT IS, AS A LAST RESORT, AS OPPOSED TO A FIRST RESORT, TO FIND THE FUNDING NECESSARY TO EFFECT CLEANUPS.

OF COURSE, NO MATTER WHAT ALLOCATION OR LIABILITY SCHEME IS ADOPTED, WHETHER IT BE A TAX BASED PUBLIC WORKS PROGRAM (WHICH WOULD RAISE ANOTHER SET OF EQUITY AND COST CONTROL ISSUES), OR "DEEP POCKETS" PURSUIT UNDER JOINT AND SEVERAL LIABILITY WITH MULTIPLE CONTRIBUTION SUITS TO FOLLOW, SOCIETY ULTIMATELY PAYS THE BILL. MOST BUSINESSMEN IN OUR INDUSTRY WOULD RATHER SEE FAIRNESS AND EFFICIENCY UNDER THE EXISTING LIABILITY SCHEME, ESPECIALLY RECOGNIZING THE REALITIES OF "FIXING" THE PROGRAM SOONER RATHER THAN LATER. EVERY YEAR UNDER THE EXISTING LAW MEANS BILLIONS OF UNPRODUCTIVE DOLLARS SPENT ON LITIGATION WHILE SITE PLUMES GROW AND CLEANUP COSTS ESCALATE.

WE FIND THAT TITLE IV OF H.R.3800 AS REPORTED BY THE HOUSE ENERGY AND COMMERCE COMMITTEE INCORPORATES SIGNIFICANT IMPROVEMENTS IN ALLOCATION OF LIABILITY AND SETTLEMENT PROCEDURE OVER THE EXISTING LAW. THESE IMPROVEMENTS PROMISE TO FORM THE FRAMEWORK OF A SYSTEM WHICH, WE BELIEVE, WILL ACTUALLY GET SUPERFUND CLEANUPS ACCOMPLISHED IN A RELATIVELY EFFICIENT MANNER. WITHOUT THESE REFORMS ENDLESS LITIGATION ACCOMPANIED BY HUGE TRANSACTION COSTS WILL CONTINUE. THIS UNFORTUNATE RESULT WILL ACCOMPLISH NOTHING OTHER THAN ENRICHING LAWYERS WHILE CAUSING ALL WHO HAVE RESPONSIBILITY TO HELP RESOLVE THIS PROBLEM TO LOSE CREDIBILITY WITH THE PUBLIC.

AMONG THE MOST SALIENT IMPROVEMENTS OVER EXISTING LAW CONTAINED IN TITLE IV OF H.R.3800 ARE:

- (1) AN ENFORCEABLE TIME LINE REQUIRING EPA AS WELL AS POTENTIALLY RESPONSIBLE PARTIES TO TAKE SPECIFIC ACTIONS TOWARD RESOLVING DISPUTES.
- (2) USING NEUTRAL THIRD PARTIES (ALLOCATORS) TO MAKE DETERMINATIONS REGARDING FAIR SHARE LIABILITY (BASED ON MULTIPLE FACTORS SUCH AS VOLUME, TOXICITY, MOBILITY).
- (3) REQUIRING EPA TO SETTLE WITH DE MINIMIS AND DE MICROMIS PARTIES EARLY IN THE PROCESS.
- (4) ALLOWING EPA TO CONSIDER ABILITY TO PAY IN ASSESSING LIABILITY. THIS LATTER FACTOR IS VERY IMPORTANT TO SMALL BUSINESS.

WHILE EVEN THIS IMPROVED PROCESS MAY BE VIEWED AS "ROUGH JUSTICE", THERE SIMPLY IS NO PRACTICAL WAY TO EXACT PERFECT JUSTICE IN MULTI-PARTY SUPERFUND CLEANUP ACTIONS DEALING WITH PAST BEHAVIOR.

MANY OF THE CONCEPTS EMBODIED IN TITLE IV OF H.R.3800 HAVE BEEN ACTIVELY PROMOTED BY NPCA FOR A NUMBER OF YEARS. THIS IS NOT TO SUGGEST THAT WE ARE SOLELY RESPONSIBLE FOR THE DEVELOPMENT OF ALL OF TITLE IV'S PRACTICABILITY AND WISDOM, BUT WE DID PLANT TONS OF PAPER (RECYCLED OF COURSE) IN EVERY AVAILABLE FORUM ON THESE ISSUES. WHEN PROGRESS HAD STALLED EARLY THIS SPRING BETWEEN

ADVOCATES OF A SO-CALLED "BINDING" ALLOCATION PROCESS VERSUS A NONBINDING SYSTEM, WE OFFERED AN INTELLIGENT MELDING OF THE TWO CONCEPTS. MR. CHAIRMAN, I WOULD LIKE TO OFFER FOR THE RECORD A BRIEF COMPARISON OF NPCA'S PROPOSALS WITH TITLE IV.

WHILE FAULT AND ROOM FOR IMPROVEMENT CAN BE FOUND BY INTERESTED PARTIES ON ALL SIDES OF ISSUES AS COMPLEX AS TITLE IV OF H.R. 3800, (AS WELL AS ITS OTHER TITLES) THIS BILL HAS FOUND SIGNIFICANT SUPPORT AMONG VERY DISPARATE GROUPS INCLUDING EPA, ENVIRONMENTALISTS AS WELL AS INDUSTRY. OF COURSE, WE OFTEN SAY AROUND HERE, IF NOBODY LOVES IT, ITS PROBABLY A BALANCED IDEA THAT MAY ACTUALLY WORK.

WHEN MANY OF THE VARIOUS GROUPS BEGAN DISCUSSING IMPROVEMENTS TO SUPERFUND IN EARNEST TWO YEARS AGO, THERE WAS ONLY DIM HOPE THAT ANY KIND OF CONSENSUS WHICH WOULD RESULT IN LEGISLATIVE AGREEMENT WOULD BE FOUND. IN FACT, THAT WAS THE CASE THREE MONTHS AGO.

AMAZINGLY ENOUGH, A DELICATE BALANCE OF A WORKABLE PROCESS WHICH, FEW CONSIDER PERFECT, MOST CAN LIVE AND WORK WITH, AND WHICH WILL PRODUCE VASTLY IMPROVED RESULTS, HAS BEEN REACHED.

I WOULD LIKE TO TAKE THIS OPPORTUNITY TO RECOGNIZE THE SPECIAL EFFORTS OF (1) THE NATIONAL COMMISSION ON SUPERFUND FOR HELPING FRAME THE BACKGROUND UPON WHICH SUCH AGREEMENT COULD BE REACHED, (2) EPA FOR ITS "OPEN DOOR" CONSULTATIONS WITH REPRESENTATIVES OF ALL SIDES OF THESE ISSUES, AND, OF COURSE, (3) THE LEADERSHIP OF

CHAIRMEN DINGELL AND SWIFT AND CONGRESSMEN MOOREHEAD AND OXLEY AND THEIR STAFFS FOR HELPING TO KEEP THIS LEGISLATION MOVING AT ITS DARKEST HOUR.

WE ALSO RECOGNIZE THAT IT WAS THE HEARINGS HELD BY THIS SUBCOMMITTEE IN 1991 AND 1992 THAT WERE EXTREMELY EFFECTIVE IN STIMULATING THE SUPERFUND REFORM "MOVEMENT" THAT CONTINUES BEFORE YOU TODAY.

WE ALL KNOW THAT TIME IS OUR ENEMY. WE ARE ON THE THRESHOLD OF AN OPPORTUNITY TO MAKE VAST IMPROVEMENTS IN A PROGRAM WHICH, TO DATE, CAN BEST BE DESCRIBED AS AN EXPENSIVE DISASTER. NPCA STRONGLY URGES THE SUBCOMMITTEE TO GIVE THE BILL AS REPORTED BY THE ENERGY AND COMMERCE COMMITTEE SERIOUS CONSIDERATION.

AGAIN, WE THANK THE CHAIRMAN AND THE SUBCOMMITTEE FOR AFFORDING US THIS OPPORTUNITY TO COMMENT ON THIS IMPORTANT LEGISLATION.

Comparison of NPCA's Proposal(s) for a New Superfund Settlements System and Title IV (<u>Liability and Allocation</u>) of H.R. 3800 (May 25, 1994)



 EPA's preliminary fact-finding and notice to parties obligations:

Does not rely at all on EPA first producing a Section 122 non-binding preliminary allocation of responsibility (NBAR) as NPCA had recommended. Instead, H.R. 3800 requires EPA to conduct a thorough PRP search and provide notice to those parties, including special notice to parties, e.g., deminimis, who qualify for "expedited settlements." EPA makes this thorough search and garners waste information using its extensive Section 104 authorities and provides all but confidential information thereby derived concerning the facility and PRPs to the notified parties. [This type of EPA notice and preliminary information-gathering requirement compares to NPCA's basis to trigger arbitration, albeit not through issuing an NBAR, and similarly provides for a separate track for expedited deminimis settlement offers.]

"Critical-mass" percentage threshold requirements for PRP voluntary settlement offers:

Does not include NPCA's recommended prerequisite threshold of 65% (aggregate of offering PRPs percentage shares) for voluntary offers to EPA, to work as a presumption in favor of offering PRPs. Instead, makes the threshold requirement for voluntary offers 100 percent, plus waiver of any contribution rights v. other PRPs. For the allocation process to commence, NPCA had advocated a 40 percent (aggregate) PRP threshold requirement; EPA offers the process to all PRP's. [This tracks NPCA's second proposal, which would have afforded an administrative law judge (ALJ) challenge to all (non-settling) PRPs.]

3. Timelines for notices, allocation reports, and settlement offers, etc.:

NPCA's first proposal pegged the initial notice and the first allocation of responsibility issuance to no later than 60 days after EPA issues the remedial investigation and feasibility study for a site (RI/FS). H.R. 3800 requires EPA to initiate a thorough search of all PRPs within 60 days of it commencing the site's remedial investigation (RI).

H.R. 3800 then provides up to 12 months for notice of responsibility to identified PRPs eligible for expedited settlements; 18 months for "preliminary notice" to other PRPs which EPA must then issue as a final list in 60 days.

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After the final list of allocation parties issues, <u>de minimis</u> PRPs listed are to receive offers to settle within 30 days. [The <u>de minimis</u> offer time requirement tracks NPCA's first proposal precisely.]

<u>Both</u> NPCA and H.R. 3800 call for a moratorium on commencement of suits and actions by the President for 90 days after the allocator's report.

Both NPCA and H.R. 3800 allow and require PRPs 90 days to make proposals to settle with the U.S. based on the final allocation report.

[A typical RI/FS now takes 3-4 years to be completed, so NPCA's suggested timeframes and H.R. 3800 come out to nearly the same endpoints, i.e., roughly 36 months to 48 months.]

4. Criteria for allocation:

Both NPCA's proposals and H.R. 3800 would have the allocator employ factors modeled after the so-called Gore criteria, (named after then Rep. Gore's offered amendment in 1979 to the first Superfund bill), to issue a "non-binding" allocation report giving percentage shares. While non-binding, per se, it carries a strong force of presumption in favor of its validity once a party offers to settle with the U.S. for its fair-share based on it. The Gore criteria are, as follows:

- A. the amount of hazardous substances contributed by each allocation party;
- B. the degree of toxicity;
- C. mobility;
- D. the degree of involvement of each allocation party;
- E. the degree of care exercised;
- F. the cooperation in contributing to the response action and in providing information; and
- G. such other factors that the Administrator determines are appropriate.

[This approach, in its totality, is a replica of NPCA's recommendations.]

5. Legal covenants and bars to contribution actions:

Both NPCA and H.R. 3800 empower the President to provide settling parties with covenants not to sue, based on meeting their agreed-to responsibilities, also giving him discretion to require premia to be paid to cover certain future liability risks, according to a schedule inversely related to the amount settlements account for as a percentage of responsibility at the facility.

Both NPCA and H.R. 3800 call for explicit contribution protection from third-party lawsuits for settling parties, and waivers of any contribution rights by settling parties. Both include protection against claims except based on contractual indemnification. Both would make the contribution protection consistent with current Section 113(f). Both provide that a settlement does not discharge the other PRPs, unless stated, but it reduces the potential liability of the others by the amount of the settlement. (The latter precludes the U.S. from recovering more than 100% in the aggregate via settlements and enforcement.)

[The construct and explicit provisions are functionally identical.] $\label{eq:construct} % \begin{array}{ll} \left(\left(\frac{1}{2} \right)^{2} + \left(\frac$

6. Judicial role, jurisdiction, and reviewability of U.S. acceptance or rejection of settlement offers:

Both NPCA and H.R. 3800 provide jurisdiction to the U.S. District Court where the site is located. Both provide the court with "equitable authority" to use the allocator's report to make an equitable allocation of response costs among the relative shares of nonsettling liable parties. H.R. 3800 also says that if the U.S. rejects an offer to settle, it must assume the "reasonable costs of defending the action after the making of the offer" if the ultimate resolution is as, or more, favorable to the offeror than the offer based on the allocation. (H.R. 3800 explicitly does not give the courts' authority, however, to review EPA and the Attorney General's decision to reject an allocator's report, in the first instance, nor does it provide for judicial review of their decision not to settle on the basis of the allocation, requiring only that a refusal to settle be explained in writing.)

H.R. 3800 makes clear that "no person" (government or private) may bring an action under Section 107, for cost recovery, or seek contribution for its costs, against any party not identified as an allocation party, or a PFP. A person whose potential claim for contribution is limited as a result of a settlement may challenge the cost recovery component of such final settlement v. EPA within 60 days in federal court where the EPA Regional Administrator is located. The settlement shall be upheld unless proven on the record that EPA acted arbitrarily or capriciously.

[This appears to be a fairly equitable and balanced overall procedure which certainly fits all of the letter and most of the spirit of NPCA's specific recommendation. The bar to court review of the government's decisions, per se, may be problematic, however.]

 Bearing of administrative costs; handling of the "orphan share", and unassigned shares:

NPCA's first proposal required EPA to provide a report to Congress in 30 months with a complete accounting of the Superfund program costs. Should the average costs of a site be running 20 percent higher than the 200 cleanups previous to this new law, then EPA would impose a moratorium on paying any part of the orphan share from the Fund, until Congress addressed the situation.

H.R. 3800 requires an annual report to be presented to Congress by EPA comparing actual settlements to the allocation reports.

In a separate provision, EPA is ordered to calculate the EPA response action oversight costs for which PRPs are liable as a percentage of total response costs incurred by PRPs to set a national rate. In no case shall the rate exceed 10 percent of total response costs incurred by PRPs. This rate shall be applied to all settlements as part of a party's liability. (The rate shall be "periodically" reviewed and updated.)

As to the "orphan share," NPCA had defined it as any portion of liability which the President determines is the responsibility of a party who no longer exists, or is not solvent, or is unidentified. H.R. 3800 defines it the same, except shares attributable to parties the allocator cannot identify are not to be considered as part of the orphan share.

In its first proposal NPCA had required the orphan share to be "split-in-half" with EPA paying half and the remaining half distributed among the allocation parties pro rata according to their shares. H.R. 3800 has its more narrowly-defined orphan share paid completely out of the Fund, subject to a national yearly maximum cap of \$300-500 million. H.R. 3800 does call for distributing 100 percent of the shares not attributable to any identified party among the allocation, including the orphan share.

[Most of the concepts and much of the mechanisms are very similar in nature.]

8. Fact-gathering powers vested in allocator; written and oral subpoena, certification, and other compulsory process:

As discussed in 1. of this memo, both NPCA and H.R. 3800 strengthen and expand EPA's current information - gathering authorities under current Section 104. Both also explicitly vest in the independent allocator powers to compel the most

information about the facility and the waste characteristics and practices of all involved parties. NPCA's first proposal provided the allocator (arbitrator) with "modified procedures" to accelerate proceedings, including requiring certified statements by PRP's subject to civil penalties.

H.R. 3800 amends Section 104 to allow the President to issue subpoena for attendance and the production of records, and allows him to require respondents to information requests to certify them as true and accurate. Noncompliance can subject parties to civil penalties of up to \$25,000 per day and criminal penalties for knowing false statements. The allocator also receives all these powers, plus the authority to call meetings and require the attendance of allocation parties.

[The expanded legal authorities for both EPA and the allocator to better and more quickly gather vital information and to compel all parties to participate are consistent.]

9. Special provisions for de minimis, small parties:

NPCA's proposal ordered the President to organize and facilitate expedited settlements with <u>de minimis</u> contributors, not dependent on other settlements, and called for payment of a premium set by EPA by the <u>de minimis</u> settlor. NPCA suggested this definition of a <u>de minimis</u> contributor: the amount of hazardous substances contributed to a site is less than one (1) percent of the total, and the nature of the waste is not significantly greater than the other waste there.

H.R. 3800 follows NPCA's suggestions completely: EPA, at the time it issued its preliminary list of allocation parties, and its final list, is to give notice of the opportunity for de minimis parties (it has identified) to obtain "expedited final settlements." Within 60 days of the preliminary notice, and 30 days within issuing the final list, EPA shall make a written settlement offer, requiring a premium as well. De minimis parties have 30 days to settle thereafter. (Should EPA provide its settlement offer more than 60 days after the date required following issuing the final list, no premia can be required.)

Pertaining to "small business" and special provisions for expedited settlements, structured settlements based on EPA's evaluation of an entity's ability to pay, NPCA proposals were silent. However, our representative serving on the National Commission on Superfund (NCS) worked for a recommendation as part of its suggested allocation scheme, which demanded that EPA look at an SBA-defined "small

business party's" ability to pay. According to the NCS report, EPA should have discretion to reduce the party's allocated share, including to zero, where appropriate. (Also, following an NPCA recommendation, EPA would establish a Small Business Assistance Section and facilitators in the regions to assist these parties.)

H.R. 3800 makes provisions for small business in keeping with these NCS suggestions. EPA is to offer expedited final settlements to a PRP who is a "small business." [Defined as one which employs fewer than 20 employees, and has gross income revenues of less than \$1.8 million or a net profit margin of less than two (2) percent.) The President shall take into consideration the ability to pay of the business, if requested -- can the entity pay and still maintain its basic business operations? If so determined, he may consider alternative methods of payment, such as installments and in-kind services. [While no EPA small business facilitator is provided for, per se, and paying nothing would not appear to be a permissible option for small business PRPs, the expedited settlement terms and definitions in H.R. 3800 for de minimis and small business substantially conform to a combination of NPCA's suggestions with those of the National Superfund Commission.]

TESTIMONY OF:

Douglas R. Elliott, Jr.
City Manager
City of Somersworth, New Hampshire
House Public Works and Transportation Committee
July 14, 1994

Somersworth, New Hampshire is a seaccast area community with a population of 11,250. It provides a full range of municipal services and has a combined City and School Municipal Budget of approximately \$15 million.

As a City Manager involved in a Superfund site and member of Congressman Zellits New Hampshire Superfund Task Force, I am grateful to be here today. I hope my comments provide you with some real-world food for thought.

The City's involvement with Superfund stems from the Sanitary Landfill which the City owns and operated from the mid-1930s until 1981.

At that time, the City began closure proceedings which included the installation of monitoring wells. The groundwater was found to contain volatile organic compounds (VOCs) which eventually resulted in the site's placement on the National Priority List on September 5, 1963.

In 1989, the Somersworth Landfill Trust (SLT) was formed by the City of Somersworth and several interested industries and businesses. The group voluntarily agreed to complete the Remedial investigation and Fessibility Study for the site.

On December 6, 1983, the EPA notified thirty-one parties, including the City, of their potential liability and of the EPA's proposed plan.

Just last month, the EPA Record of Decision selecting the final remedy for the landfill was issued. After about 11 years and two million dollars of local City funds alone, not one drop of groundwater has been cleaned.

Why is that? What should be done to improve Superfund's performance in the future?

I know these are among the many, many questions you are searching for answers in the hope of truly improving the Superfund Program and developing a political consensus.

First, let me encourage you, if you have not already, to review the Final Report of the New Hampshire Superfund Task Force, a task force established in July of 1992, by Congressman William H. Zeliff, Jr.. The Task Force addressed problems of the Superfund Program and made a number of recommendations. This report is unique because of the cross-section of New Hampshire interests represented which provided a balance on the issues dealt with and the recommendations made. This report, of course, provided the basis for the bill introduced by Representative Zeliff, known as the Comprehensive Superfund improvement Act of 1994 or H.R. 4161. I am encouraged by this legislative effort because it offers needed and truly comprehensive reform.

I want to focus my comments on two essential Issues. For, I bolleve that any effort to reform Superfund must begin with these two key issues first.

Key Issue 1

Cleanup Goals

First and foremost, in any proposal must be a clear understanding of our cleanup goals. Is the goal environmental restoration of a public resource or protection of public health? Congress must first resolve this issue in order to focus on our nation's limited resources.

My experience in Somersworth would indicate that the fundamental goal should be the protection of the public health. The restoration of groundwater to pristine standards, when such a resource will not be used for drinking water, makes no sense in a world of ever-competing demands for finite resources.

Furthermore, the goal of cleaning contaminated groundwater to drinking water standards may be beyond present technology at many sites.

Therefore I urge you to focus on the primary purpose of the Superfund Program and would hope that the cunsensus is protection of public health.

Key Issue 2

Risk Driven Remedies

Under the existing Superfund law, every remedy must achieve the same level of cleanliness regardless of the actual risk present at the site. For example, at the Somersworth site the Risk Assessment completed by the potentially responsible parties concluded that there is no current risk associated with the Landfill. The only risk posed is a theoretical future risk for a small number of residents along Blackwater Road. This risk is based on the unlikely assumption that current or future residents will use well water rather than City water. This assumption is made despite City water being available along Blackwater Road since 1972 and the naturally occurring poor quality of groundwater in the area (the groundwater suffers form high iron and manganese).

Thus. EPA's risk assessments are based on unrealistic, conservative assumptions. Furthermore, if a remedy is needed, it must be protective of human health, the environment, and meet all Faderal and State ARARs.

All of this results in a wasteful remedy driven by unrealistic and unnecessary clean-up standards instead of actual risks.

By restructuring Superfund so that remedies are based on actual risk, millions of dollars could be saved in Somersworth and other Superfund sites.

In conclusion, if we truly want to improve the performance of Superfund, then our efforts must be focused on clearly defining the clean up goals and insuring that remedies are based on realistic risk assessments.

TESTIMONY OF:

Roger Phillips
President and CEO
The Bailey Corporation
House Public Works and Transportation Committee
July 14, 1994

I am very pleased to be here today to talk about the Superfund program and my participation in Representative Bill Zeliffs New Hampshire Superfund Task Forco. As a small business owner, I believe that Superfund liability is one of the most serious issues facing small businesses in America.

A general introduction to myself and my company, the Bailey Corporation, may be helpful to put things in perspective. Bailey Corporation employs 375 people at our headquarters and plant in Seabrook, New Hampshire. Our business consists of designing, engineering, molding and painting plastic exterior components for Ford, General Motors and others in the automobile industry. Bailey's origins date back to 1882 when the Bailey family built sleighs and carriages in Maine. We have been located in Seabrook for over 30 years.

The Bailey Corporation first learned of Superfund in the mid-1980's, when we were informed of our potential liability at a landfill in Massachusetts. In this case, it seems that the Bailey Corp., under prior ownership at the time, lawfully and responsibly paid licensed waste haulers to dispose of drums of oil and paint wastes at an accredited landfill. This landfill later became a Superfund site. As a result of our liability, in 1988 we were bludgeoned into paying \$700,000 as Bailey's assigned share of the estimated \$30 million cost of cleanup. I say "bludgeoned" because when the larger PRPs at a Superfund site join together to form a site steering committee, we little guys have no choice but to join in because of the significant risk associated with pursuing an independent course.

Six years later, our \$700,000 hasn't gone very far. The site has yet to be cleaned up. As a small company with a net worth of only \$2 million at that time, there were many times when \$700,000 in our bank account would have been put to more productive use than the EPA has apparently made of it.

Moreover, the \$700,000 which we paid in connection with that landfill was not the end but only the beginning of a treadmill which has gone on and on. In each of the six years since then, we have paid annual assessments of about \$40,000, levied by the steering committee on its members to pay for the steering committee's lawyers, consultants and administrators. When you add to this the fees we continually pay our lawyers for interacting with the committee, our total costs to date in connection with the landfill are over \$1 million, and are still climbing. There is no prospect of these annual assessments ever ending, and meanwhile the site remains uncleaned.

On top of our significant liability and transaction costs, Superfund liability has greatly affected the Bailey Corp. in four other ways:

- 1) We have had difficulty finding lenders which would lend us working capital because of our contingent Superfund liability.
- 2) A great deal of our executives' time is being spent solely on Superfund matters, with very little to show for our effort.
- 3) Superfund has hurt our abilities to acquire other companies who we discover may have condugent Superfund liability. The risk simply isn't worth the reward.
- Our liability and transaction costs were money lost towards R&D and training our workers.

"Polluter Pays" Myth

Superfund was founded upon the theory of making the "polluter pay." I agree with this principle, but do not agree with the broad definition given to the parties who are dubbed "polluters." At many Superfund sites, the truly willful polluters or "midnight dumpers" have often left or gone bankrupt. Usually the so-called "polluters" who are left holding the bag at these sites are companies like mine, who were disposing of their waste according to the accepted practices of the time and to the letter of the law. I wholeheartedly agree with Superfund's goals of protecting human health and the environment, but I cannot stand idly by while the program further victimizes thousands of businesses like mine by applying retroactive, strict

liability for actions that were proper and legal when they occurred. We are not "polluters."

As we all know, in the 1960's and 70's there were minimal requirements in America for the handling and disposing of hazardous waste. There is no doubt that some businesses may have used unlicensed waste haulers during this period, not because it was illegal, but because it was cheaper. However, the vast majority, like Bailey, disposed of its waste in a thorough and environmentally proper manner, and are now being forced to pay a penalty for having done the right thing at the time.

I have heard people suggest that Superfund's retroactive, punitive liability system provides an incentive for responsible waste management today. This makes no logical sense. Clear and tough <u>prospective</u> Superfund liability, as embodied in alternative reform legislation, provides ample incentive for future disposal actions.

The Plight of Small Businesses

Small businesses are at a distinct disadvantage under Superfund. Unlike larger companies, we do not have a team of lawyers to help argue our cases in court nor do we have records of our waste disposal activities which date back to decades ago. Unlike municipalities, small businesses cannot raise taxes to help offset their potential liability costs. The more my company gets involved in Superfund, the more attention I personally devote to the problem and away from running my business. Rather than spending time and money on ways to make Bailey more competitive, I am forced to spend significant resources on our transaction costs.

Fundamental Retroactive Liability Reform Is The Answer

I was honored to serve on Rep. Zeliff's much-needed Task Force on Superfund. 1 am elated that Rep. Zeliff has crafted the task force's recommendations into his Comprehensive Superfund Improvement Act of 1994, H.R. 4161, and am heartened that the elimination of retroactive liability serves as the cornerstone of the legislation. As someone who talks frequently with other small business owners concerned with Superfund, I must inform you that this is overwhelmingly the biggest complaint about the program among small business owners outside of Washington.

Both Rep. Zeliff's bill and the Alliance For A Superfund Action Fartnership, or ASAP, of which I am a member, advocate replacing Superfund's retroactive liability system with a broad-based trust fund, paid for by businesses. This broad-based fund would help to eliminate much of the money currently spent on Superfund transaction costs, while concentrating on putting money into actual site cleanup. It would allow EPA to focus on swift, progressive cleanups at Superfund sites, instead of getting bogged-down in trying to assess "who's to blame." Importantly, both proposals maintain a modified version of Superfund's current liability system for future disposal actions to maintain incentives for responsible waste management.

Superfund's retroactive liability system, if left untouched, has the potential to destroy any small business in America. I urge Congress to fundamentally reform this most devastating aspect of the Superfund law. Until you come to grips with retroactive liability, Congress is merely rearranging the deck chairs.

Thank you. I would be happy to answer any questions you might have.

TESTIMONY

of

ALFRED M. POLLARD THE BANKERS ROUNDTABLE

on behalf of the
ENVIRONMENTAL LENDER LIABILITY COALITION

before the

HOUSE OF REPRESENTATIVES COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT

July 14, 1994

Mr. Chairman and Members of the Subcommittee, I am Alfred M. Pollard, a Senior Director at The Bankers Roundtable, which represents the nation's 125 largest banking institutions. I am here today on behalf of a broad coalition of over 75 national trade associations and individual firms, representing lenders and borrowers, guarantors and insurers, small businesses and farm groups and fiduciaries.

Mr. Chairman, I want to commend to the subcommittee two significant parts of H.R. 3800 that will have major benefits not only for lenders and borrowers-including home builders, small businesses, inner city developers and farmers-- but as well the environment itself.

Secured Party Liability

Section 407 of H.R. 3800 would restore to effect the 1992 Environmental Protection Agency rule on lender liability under Superfund. This rule was invalidated by the <u>Kelley v. EPA</u> decision in the D.C. Circuit Court of Appeals, not on its merits, but based rather on a lack of statutory foundation for rulemaking in this area. Section 407 addresses this deficiency in regulatory authority and then goes further to reinstate the specific lender liability rule.

While the Congress has had legislation before it for several years, the EPA acted to provide guidance and certainty to secured parties that extend funds and employ property as collateral. This lack of certainty impacts not only lenders, but as well guarantors, title and mortgage insurers, secondary market parties and others who have a relationship to property based on a security interest. With the recent Kelley case, the uncertainty that faced lenders has returned and H.R. 3800 is needed by the financial and borrowing communities.

The beneficiaries of this legislation are many. Today, some borrowers face added and often unnecessary costs because of the business in which they engage or the geographic area in which they operate. Other borrowers simply will not get credit for the same reasons. Both of these are unfortunate results and ones which ironically impact adversely on the environment.

Secured parties will have to conduct their affairs responsibly under this bill. First, they must not participate in hazardous waste decisionmaking and must remain in a "financial" position in relation to property. Second, if they cross the line, then liability will attach. This was what Congress provided in 1980 and this is what H.R. 3800 would restore-- clarity and certainty that will permit needed financing to flow to worthy borrowers.

An important benefit of this section of H.R. 3800 is to the environment. Specifically, with greater certainty on potential liability, lenders can provide credit for environmental clean up. This will benefit the Superfund program by permitting clean up by the private sector and will benefit the environment by encouraging preventive actions before a significant discharge occurs. Further, private sector action will avoid taxpayer costs for clean up. Second, nonproductive property will be put back into use.

An important third benefit will be for inner city redevelopment, a goal across the country. Lenders are required by the Community Reinvestment Act to meet the credit needs of their communities. Inner city borrowers frequently confront uncertain environmental histories on their properties or clear contamination. By providing secured party certainty, H.R. 3800 will permit credits to be extended that will assist these communities restore their economic base and social well-being. There have been many instances of former industrial properties going unrepaired due to environmental liability concerns for lenders or guarantors; old buildings that can be converted to multi-use offices, retail space and housing simply cannot be redeveloped without unnecessary costs or, in some cases, they cannot be redeveloped at all. This is an unfortunate and counter productive result.

Finally, and most ironic, compliance with other environmental statutes such as Clean Air and Clean Water Acts may be adversely impacted under the current situation. Small businesses and others seeking to borrow funds to comply with these laws may find credit unavailable when they use property as collateral for a loan. The result is that uncertain Superfund liability may impede compliance with other statutes.

On behalf of a very broad coalition, I want to encourage your support for the lender liability section of $H.R.\ 3800$.

Fiduciary Liability

One weakness of the EPA's Superfund rule on lender liability and the pending lender liability under the Resource Conservation and Recovery Act is the failure to address fiduciary liability. Fiduciaries-- including trustees, bankruptcy trustees, estate executors, pension fund administrators and others-- face similar liability to lenders. They are unable to control the activities of property holders, yet may be liable as "owners" or "operators" under Superfund's joint and several liability scheme.

Working with the administration as well as members of the majority and minority, I am pleased to note that H.R. 3800 would address the problem facing fiduciaries. The bill takes a very strict approach. It provides a definition of fiduciaries and sets forth a general approach to liability.

Specifically, Section 605 provides that the property administered by the fiduciary in an estate remains liable under Superfund. The bill goes further to note that fiduciaries are generally not personally liable. Here Section 605 is very specific in preventing abuses. A fiduciary may be personally liable if the person had personal Superfund liability prior and apart from the trust or fiduciary role, the fiduciary may be personally liable if the trust represents a "sham" transaction and there will be liability if the fiduciary does not exercise due care in administering the trust, causing or contributing to the release of hazardous substances following establishment of the fiduciary relationship. The bill encourages fiduciaries to seek clean up of property by facilitating response actions under Section 107(d)(1) of CERCLA.

Recent court decisions, notably the <u>City of Phoenix</u> case, have created uncertainty for the role of fiduciaries. This again is an unnecessary result and impacts adversely on banks, executors of wills, bankruptcy trustees, pension plans, universities and others who undertake their fiduciary obligations in good faith and have had no role in making hazardous waste decisions. The provisions of H.R. 3800 are balanced in providing clarity to fiduciaries, clear standards of liability for those who abuse their role as fiduciaries and encouragement for fiduciaries to support beneficial hazardous waste management and clean up.

Summary

On behalf of the coalition and the association with which I work, I want to encourage the Committee to act favorably on lender and fiduciary liability clarification contained in H.R. 3800. I hope my testimony has evidenced the benefits that should accrue.

Attachment

LEGISLATION NEEDED TO RESTORE SECURED PARTY EXCLUSION UNDER FEDERAL ENVIRONMENTAL LAWS

In 1980, Congress passed the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund). The law provides remedies for a facility or property contaminated with hazardous substances, and it makes broad categories of persons strictly liable for cleanup costs.

The Superfund law specifically excluded from liability secured parties which hold collateral rights to land, homes, facilities or equipment and who do not take part in the operation of a facility. The Resource Conservation and Recovery Act (RCRA), which deals with solid waste and underground storage tanks, provided exclusions as well.

Contrary to congressional intent, court rulings weakened key definitions and either denied protection or created unacceptable uncertainty for secured parties, placing them at risk of falling outside the exemption. For example, one court indicated that liability could be found if an inference could be made that a lender could have affected, through financial arrangements, borrower activities.

Lenders and others may be held retroactively liable for actions they had no ability to control and for sums vastly beyond the amount of their credit extension or collateral value. Similar liability may be imposed on trustees and fiduciaries with respect to properties administered for others; recent court cases have cast doubt on trustee liability, even where they play no part in the operation of a facility.

Businesses, particularly small businesses such as convenience stores, service stations, home builders and farmers, cannot obtain financing needed to survive or grow. In cases where loans are being made, costs have been driven up by uncertainty and open-ended risk, concerns of importance for secondary parties such as mortgage insurers and title companies as well.

The Environmental Protection Agency attempted to remedy the uncertainty, promulgating in April, 1992, a clarifying rule. The rule increased certainty, but did not remove the need for legislation. EPA's rule does not apply to RCRA, does not treat fiduciary situations and was overturned in a legal action. Ironically, Superfund costs could be reduced by legislative language restoring the secured party exemption and clarifying the treatment of fiduciaries as loans for private cleanup of hazardous sites have been stifled by lender liability fears.

Congress must act to restore the intent of Superfund and matching provisions of RCRA by clarifying that lenders, trustees, lessors, fiduciaries, government agencies, federal and private guarantors and others who make secured loans or act as fiduciaries are not liable, except where they directly cause environmental damage. Proposals implementing congressional intent and restoring the secured party exclusion should not remove liability for cleanup to the extent the otherwise exempt party actually caused a threat or actual discharge of hazardous substances.

June 1994

SECURED PARTY ENVIRONMENTAL LIABILITY WORKING GROUP

The organizations listed here urge Congress to act to insure that adequate credit is available at a reasonable cost by restoring congressional intent on the treatment of secured parties and clarifying liability of fiduciaries under federal environmental statutes.

Associations

National Association of Home Builders Independent Bankers Association of America American Bankers Association Savings & Community Bankers of America Mortgage Bankers Association of America Credit Union National Association National Association of Federal Credit Unions Conference of State Bank Supervisors Consumer Bankers Association National Association of Industrial & Office Parks The National Association of Realtors Institute of Real Estate Management Building Owners and Managers Association International Council of Shopping Centers National Realty Committee National Multi-Housing Council California Bankers Association National Apartment Association American Financial Services Association National Association of Truck Stop Operators American Land Title Association American Council of Life Insurance Farm Credit Council Associated Builders & Contractors Bank Lessors Group National Federation of Independent Businesses Commercial Finance Association Petroleum Marketers Association of America Society of Independent Gasoline Marketers of America National Association of Convenience Stores Mortgage Insurance Companies of America Mortgage Bankers Association of New York Equipment Leasing Association The Bankers Roundtable Environmental Bankers Association

Companies

Marine Midland Bank
Chemical Bank
Texas Commerce Bancshares, N.A.
Barclays Bank FLC
Bank of America
NBD Bank, N.A.
Chase Manhattan Bank

2

Mellon Bank Barnett Banks, Inc. First Interstate Bank Citibank J.P. Morgan & Co. NationsBank Meridian Bancorp, Inc. Continental Bank, N.A. Firstar Corporation Banc One Corporation Springfield Farm Credit Banks Crestar Financial Corp. First Bank System Bankers Trust Company Capital Holding Corp. Ford Financial Services Group Bank of Boston First Chicago Travelers John Hancock Mutual Life Insurance Company Beneficial Mgmt. Corp. Household International Wells Fargo Bank Fleet Financial Group, Inc. The Prudential Insurance Company of America Massachusetts Mutual Life Insurance Company Farm Credit Bank of Baltimore Liberty National Bank Capital Guaranty Insurance Company The Phoenix Home Life Mutual Insurance Co. First Florida Bank, N.A. Mutual Savings Bank, F.S.B. Norwest Corporation New Butte Mining, Plc Financial Commissioner, State of Montana

Statement of William J. Roberts Legislative Director Environmental Defense Fund

on

H.R. 3800, Superfund Reform Act of 1994

before the

Subcommittee on Water Resources and Environment Committee on Public Works and Transportation U.S. House of Representatives

July 14, 1994

I. Introduction

On behalf of the Environmental Defense Fund and its 250,000 members, I want to thank Chairman Applegate, Representative Boehlert, and the other members of the Subcommittee for this opportunity to discuss H.R. 3800, the Superfund Reform Act of 1994. EDF has been actively involved in the Superfund reauthorization process for the last 18 months, serving on EPA's NACEPT Committee on Superfund and on the National Commission on Superfund.

Along with other environmental organizations, EDF has worked hard to help craft legislation that will address the serious flaws in the current Superfund program, while at the same time assuring and enhancing the protection of human health and the environment. We believe that H.R. 3800 largely achieves these objectives and we urge this Committee to act swiftly on this legislation.

Time is short. With few legislative days remaining in this Congress, the largest obstacle to Superfund reauthorization is the calendar. However, the consequences of reauthorization delay could be severe. Cleanups are likely to be postponed or slowed, potentially responsible parties will delay settlement discussions pending new legislation, and EPA will be forced to marshall its diminishing resources – postponing cleanup contracts and investigations. Inaction by this Congress will send a signal to the hundreds of communities who have already waited for cleanups, in many cases more than a decade, that they must wait again.

H.R. 3800 provides an opportunity to avoid this outcome. Although far from perfect, H.R. 3800 squarely addresses the most serious problems with the current Superfund program. In all candor, this is not the bill that EDF or any other environmental group would have drafted. On several key issues, we believe the bill falls far short of strong public health and environmental protection. Nonetheless, we are convinced that on balance – weighing all titles of the bill together – H.R. 3800 should be passed by this Committee.

H.R. 3800 substantially improves community involvement in the remedy selection process, which will lead to improved cleanup decisions. The bill improves upon current law by not only requiring cleanups to protect human health and the environment, but requiring EPA to do so in a manner that provides consistent and equivalent protection from community to community. H.R. 3800 retains the current liability test of retroactive, strict, joint and several liability – which maintains the powerful incentive for cleanup and pollution prevention activities while providing revenue for cleanups.

We recognize that some members on this Committee have concerns with H.R. 3800. We also recognize that this Committee – not outside groups – has the authority and constitutional obligation to make the difficult policy determinations raised by Superfund reauthorization. Although H.R. 3800 has been described as a "delicate compromise" among

stakeholder groups, EDF is fully prepared to assist the Committee in any way possible to respond to members' concerns.

To assist the Committee, the remaining portions of this statement set forth EDF's views on three key aspects of H.R. 3800 – community involvement, cleanup standards, and liability. Although other issues are raised in H.R. 3800, we believe these three topics are the most important to EDF and its members.

II. Community Involvement

A. Background

These days, if you mention the word "Superfund" to anyone "inside the Beltway," chances are the ensuing discussion will focus on the law's liability scheme. "Who should pay, how much and for which activities?" But while we argue about orphan shares, de minimis settlements, and the "fairness" of it all, thousands of Americans outside the Beltway continue to suffer from the adverse physical, emotional and financial effects that often result from living next door to Superfund sites.

To be sure, those corporations, both large and small, municipalities, states and federal agencies who have been identified as Potentially Responsible Parties (PRPs) at Superfund sites also suffer hardships from their involvement with these sites. However, unlike the citizens living next to the site, PRPs typically do not live, day in and day out, with the results of cleanup decisions which have a tremendous impact on the health and wellbeing of Superfund communities and residents.

Superfund's current public relations program is failing the American public in at least five major respects: (1) the public participation provisions of the law only apply to those sites scored and placed on the National Priorities List (NPL); (2) citizens are excluded from participating in many critical Superfund site decisions; (3) the TAG program fails to provide adequate assistance to citizens; (4) there is little, if any, opportunity for coordination among Superfund communities; and (5) EPA's Superfund Community Relations program is underfunded.

1. Public Participation is Limited to NPL Sites. As currently drafted, section 117 only applies to those sites that have scored high enough on EPA's Hazard Ranking System (HRS) to be included on the National Priorities List (NPL), the list of the allegedly worst toxic dump sites in the country. Unfortunately, the validity of the HRS system has been, and continues to be, called into question, most recently for its under-representation of communities of color. Despite the fact that people of color are heavily over-represented in metropolitan areas with the largest number of uncontrolled hazardous waste sites, the majority of sites which have been scored and slated for cleanup on the NPL, are in white communities. (See, Toxic Waste and Race in the United States, Commission for Racial Justice, United Church of Christ, 1987, p.xiv; Unequal Protection: the Racial Divide in Environmental Law, National Law Journal Special Investigation, September 21, 1992, p.

- S6). As a result, many low income and minority communities are denied the public involvement opportunities afforded to other communities.
- 2. Citizens are Excluded From Critical Decisions. Even when a site is included on the NPL, citizens are excluded from participating in many critical Superfund site decisions which follow site listing. Under the current statute, EPA is required to inform and take public comment from citizens on the proposed remedial action plan, a relatively late stage in the Superfund process which many citizens feel is too limited to allow for meaningful input. Among the critical decisional stages where the current law does not mandate citizen involvement include: (1) preliminary assessment and site analysis (PA/SI); (2) development of site health assessments studies; and (3) remedy implementation and oversight. Decisions made at these stages also can have a profound impact on human health and the quality of a Superfund community's environment.

The current statutory limitation becomes even more critical to the extent that amendments to Superfund's remedy selection process call for additional local factors to be considered in the decision-making process.

3. The TAG Program Has Failed to Provide Adequate Assistance. EPA's program to provide Superfund communities with technical assistance grants, (TAG program), for the hiring of technical experts by communities, has not been as successful as originally hoped. Despite the existence of some 1,200 sites on the NPL, EPA has only received some 125 TAG requests and issued 122 TAGs as of October 8, 1993. In November 1992 testimony by the U.S. General Accounting Office (GAO) before the House Public Works and Transportation Committee, the GAO found that, at least in part, EPA's "limited emphasis on TAG program outreach efforts at the headquarters and regional levels... contribut[ed] to the low participation in the program."

In addition, the GAO cited some of the following factors as contributing to the low number of TAG grant applications received and awarded include: (1) the Federal TAG application process is highly bureaucratic and time consuming and deters many citizens from successfully completing the process; (2) the 20% citizen matching fund requirement intimidates many potential grant recipients from applying, despite EPA's policy to permit successful recipients to contribute "in-kind" services in lieu of cash to meet the matching requirement; (3) the TAG disbursement requirements which require successful recipients to spend their own funds up front, then seek reimbursement from the EPA; and (4) the lack of adequate EPA resources to publicize the grant program and provide hands-on assistance in grant application procedures. (*Id*, *p*, *3*.).

4. No Opportunity for Community Coordination. Under EPA's current public relations program very little effort has been made to encourage different Superfund communities to share expertise, information and other experiences with each other. Instead, citizens from contaminated communities and regions of the country have been forced to fend for themselves by forming their own citizen information networks in an effort to assist similarly situated citizens. Unfortunately, these citizen-led efforts are characterized

by inadequate resources, incomplete coverage of NPL sites, and limited coverage of non-NPL affected communities.

5. EPA's Community Relations Program is Underfunded. Finally, Superfund's public relations program has taken a back seat to other legislatively mandated priorities at the Agency. Underfunded for the last six years, the community relations program breeds mistrust in many Superfund communities instead of cooperation. Without trust, cooperation from a community faced with threats to their health and the health of their families, the degradation of their community and natural environment, and the loss of their financial investments, is impossible.

B. H.R. 3800 Provisions on Community Participation

Fortunately, H.R. 3800 would result in major improvements in community participation. To address the fundamental failings of the current Superfund community relations program, EDF supports the following specific legislative and administrative proposals provided in H.R. 3800:

1. Timely and Meaningful Access to the Decision-making Process. To ensure that the public has timely and meaningful access to the decision-making process, the public must have knowledge about the toxics in their communities and the Superfund cleanup process. Accordingly, EDF supports H.R. 3800's three-tiered approach to ensure meaningful participation through: 1. creation of a Citizen Information and Access Office (CIAO) in each state; 2. authorization of Superfund Community Working Groups (CWGs); and 3. revision of the TAG program. In our view, each component in this approach is vital to the successful integration of community input into the Superfund process.

First, the CIAO would provide citizens with information about the Superfund identification and cleanup process and maintain lists of technical, health and other relevant experts licensed or located in the state who are available to assist citizen groups. The CIAO would also serve as an information clearinghouse for the state's citizens. In addition to maintaining records of site status and lists of active citizen groups and available experts, CIAOs would also be a repository for information about health assessment and other related health data generated from Superfund sites in the state. CIAOs would also assist EPA in its efforts to notify, nominate and select potential CWG members. Finally, CIAOs would collect information from EPA or other federal or state agencies regarding the continued effectiveness of removal actions and long-term remedial actions taken in the state.

Recognizing the clear importance of accountability and oversight, EDF supports strict provisions to ensure that CIAOs are properly managed and that funds provided are prudently and properly expended. H.R. 3800 requires the governor or EPA Administrator to certify annually that the CIAO has spent funds properly. EPA's Inspector General would also be required to review such programs and reports periodically, to verify the accuracy of

the certification. A CIAO's failure to ensure the proper use of such monies would result in the CIAO's termination.

Second, EDF also supports the establishment of CWGs. The purpose of CWGs is to bring the diverse players at Superfund sites to a common table to openly discuss the critical issues related to site cleanup. The primary role of the CWG would be to provide input to EPA, the Agency for Toxic Substances and Disease Registry (ATSDR), state regulatory agencies, federal and state natural resource trustees and lead-PRPs on various issues related to cleanup such as, site health studies, potential remedial options, and selection and implementation of interim and final remedies. In addition, EPA would be required to consult with CWGs at several critical junctures in the NCP process, including determining the scope of work for the preliminary assessment, the scope of work for the remedial investigation, the methodological assumptions used in the remedial investigation, and future land use scenarios.

Third, EDF supports the provisions in H.R. 3800 that improve the Technical Assistance Grants program. H.R. 3800 simplifies the TAG application process; removes the TAG program from the general federal grants program and reestablishes it within EPA as a separate program; makes TAGs available earlier, as soon as a site is identified, so that citizens can participate in investigations that may lead to the site's listing; removes the matching funds requirement; reverses the current funding and oversight mechanism for TAGs by providing citizens with TAG funds immediately instead of reimbursing citizens for expenses; removes the restriction making TAGs available over only a three year period; expand the amount of funding available for any site; expand the activities and tasks eligible for TAG funding; allows a TAG recipient to choose its own technical experts and scientific laboratories.

- 2. Ensuring an Enforceable Right to Participate. To ensure that citizens are provided with a meaningful opportunity to participate in all discussions between EPA and PRPs regarding the selection and implementation of a remedy, EDF supports the creation of a legally enforceable right of public participation. This right would ensure at least a minimal level of public participation where a CWG is not formed. Although H.R. 3800 makes it clear that public participation is a nondiscretionary duty for EPA, EDF believes that additional statutory language is needed to make clear that citizens can enforce their participation rights in a timely manner. We have crafted language, working with the Administration and industry groups, that would achieve this objective and we urge members of the full committee to support this change.
- 3. Restoring the Public Health Focus Community Environmental Health Demonstration Grants. An overriding goal of Superfund is the protection of human health. However, one key element of the 1986 reauthorization has failed to provide communities with the kind of health information promised. Although Congress directed ATSDR to conduct health assessments to determine the effects of Superfund sites on human health, a 1991 GAO report found that these health assessments have been seriously flawed. Other studies have shown that ATSDR relies excessively upon statistical study methods -

which are necessarily inconclusive due to the limits of statistical methods applied to small, neighborhood-scale exposed populations. The net result of these flaws in the federal environmental health approach is that communities who are in crisis—who need real help—do not get it.

The National Commission on Superfund recognized this need in its recommendation for the establishment of Community Health Demonstration Grants program. In a consensus among industry representatives, the insurance industry, environmental organizations, municipalities, small business, and affected communities, we strongly supported that \$50 million a year be allocated to support this program. The Community Health Demonstration Grants would provide a centralized place for the gathering of data regarding symptoms and illness related to exposures; providing information to citizens regarding their health (e.g., information from health physicals and tests); referrals to other health care services when diagnosis warrants. EDF is not suggesting a new direction or mandate for Superfund. Under current law, ATSDR has the authority to provide such services. The Commission recommended a program that simply implements that mandate.

III. Remedy Selection

A. Background

One of the major concerns EDF has had with the current application of cleanup standards and remedy selection in the Superfund program is the widely variant cleanup decisions made from site to site throughout the country. Some communities receive excellent cleanups for their sites, while other communities receive wholly inadequate cleanups. These variations are a product of statutory criteria that afford EPA substantial discretion and flexibility in making cleanup decisions through the nation. They also stem from the application of an acceptable "risk range" policy that allows EPA the unfettered discretion to protect one community from cancer risks at a level vastly different from the protection afforded another community, oftentimes without explanation or justification.

Many community groups and environmentalists have advocated that the law be changed to bring greater standardization and transparency in cleanup decisions. Providing greater certainty and clarity to the remedy selection and cleanup process will not only help communities, but will help businesses who have expressed concerns that some cleanup decisions require expenditures that don't appreciably increase human health or environmental protection.

This common concern about uncertainty and variability by environmentalists and industry formed the basis for the recommendations by the National Commission on Superfund and, ultimately, the provisions of H.R. 3800. Overall, EDF believes that the cleanup standards and remedy selection process should (1) have a clearly articulated goal, (2) be guided by a decisionmaking process which is understood by all of the affected parties, (3) be streamlined to work effectively and efficiently to protect human health and

the environment, (4) contain incentives for the development and implementation of new and improved remedial technology, (5) provide a clearly defined role for meaningful involvement by affected communities, and (6) provide a consistent rationale for decisionmaking. We strongly believe that every community deserves the identical guarantee of meaningful health protection for each remedy selected.

Given this background, its worth addressing specifically the major issues raised by members regarding cleanup standards and remedy selection.

B. Statutory Goal

To address the persistent variability in Superfund cleanups, H.R. 3800 would take several steps to create consistency in the establishment of cleanup standards and the determination of remedies. The current statutory goal of Superfund requires the Administrator to take the steps "necessary to protect the public health or the welfare or the environment." Section 104(a)(1). As noted earlier, this standard has been interpreted by EPA to permit the use of a risk range for carcinogenic risk between one in ten thousand and one in a million. EDF and other environmental organizations and community groups have been opposed to the continued use of the risk range because it affords EPA the latitude to provide similarly situated communities with a one hundred-fold difference in protection without explanation.

Currently, EPA uses the risk range to account for varying site factors that may make application of conservative, national defaults inappropriate. EDF believes that it makes sense to allow such flexibility, but believes accounting for site specific conditions should be set forth explicitly in the process of conducting risk assessments and setting cleanup levels using clearly stated rules, rather than shrouded in the hazy adjustments of risk levels. We support the approach taken in H.R. 3800 requiring an upfront, explicit delineation of relevant site-specific factors, default values, and toxicity information. This approach provides appropriate site-specific flexibility, but assures that each cleanup standard meets a single risk level. Both communities and PRPs will be able to see how and why a specific cleanup level was selected.

It is critical to understand that requiring a single risk level does *not* mean a single hazardous substance concentration level. The risk protocol in H.R. 3800 provides concentration levels that will vary from site to site based on site specific conditions, including natural conditions and land use. But, H.R. 3800 makes clear that, whatever the concentration level selected, it must assure equivalent protection with all other sites. Setting a uniform cleanup goal is vital for EDF's continued support of H.R. 3800.

C. National Risk Protocol

EDF also supports H.R. 3800's use of a national risk protocol and the application of standardized formulae to set protective concentration levels. Once again, EDF believes that H.R. 3800 will bring greater transparency and consistency to the cleanup process by

requiring EPA, in a rulemaking, to determine for each relevant exposure pathway and land use fixed components and variable components that can be used to determine the protective concentration levels at each site. This avoids a site by site debate on nationally relevant toxicity information, but affords an explicit opportunity to use actual site specific information in appropriate circumstances.

In establishing risk assessments under H.R. 3800, EPA must use reasonable estimates of high-end exposures that do not exaggerate risks by inappropriately compounding multiple hypothetical conservative assumptions. Clearly, H.R. 3800 rejects the possible use of "central tendency" assumptions that would only protect the average, exposed individual. Instead, H.R. 3800 makes clear that EPA must ensure that the affected population, including sensitive subpopulations, receive the required level of protection established in achieving the national goal – and that assumptions established by the protocol meet that goal.

D. Groundwater Remediation

We support the provisions of H.R. 3800 that require the remediation of groundwater that may be used for drinking water. EDF believes that groundwater is a critical national resource that should be remediated where technically feasible. H.R. 3800 retains the provisions of current law providing for a waiver from the remediation requirement, if such remediation would be technically impracticable. In addition, H.R. 3800 does nothing to affect EPA's current discretion to implement this requirement using flexible time frames, and natural methods of remediation such as natural attenuation. It also does nothing to limit EPA's determination of the point of compliance. EDF believes that such discretion makes sense, given the site specific factors affecting groundwater remediation.

Nevertheless, we believe strongly that retention of the statutory requirement to remediate contaminated groundwater in H.R. 3800 is vital to our continued support of this legislation.

IV. Liability

A. Background

EDF believes that Superfund's liability system is the cornerstone of this nation's hazardous waste and pollution prevention policies. Alterations in this system should be undertaken cautiously, without weakening the important incentives created by this regime.

Although there are a wide array of liability issues raised by H.R. 3800, EDF and many others in the environmental community will be focused on two main issues during reauthorization. First, reauthorization must ensure that Superfund retains the powerful incentives in the current law for pollution prevention and voluntary cleanup. Clearly, Superfund's main purpose is to remediate identified sites that pose a risk to human health and the environment. But, Superfund – and its liability system in particular – serves a much larger purpose in giving businesses a compelling incentive to address the risks associated with hazardous waste generation and disposal. In our view, H.R. 3800 retains these important incentives, but we wish to make clear that our continued support hinges on

preserving these incentives. We will vigorously oppose efforts to eliminate or substantially weaken these incentives.

Second, as Congress considers the allocation approach in H.R. 3800, we will seek assurances that funding for so-called "orphan" shares is precisely identified in the statute and does not in any way lessen the ability of the federal government to finance ongoing or future cleanup activities. In our view, it is simply indefensible for the federal government to slow or stop cleanup work in some communities solely to defray the "orphan" share cleanup costs of an identified polluter. If it is Congress' judgment that the federal government should pay for "orphan" shares, Congress should find the additional resources to do so and not place the burden on the backs of local communities who have already been denied adequate cleanups for too long.

Given the myriad of issues associated with liability reform, we will confine our comments to what we consider to be the major issues raised by H.R. 3800. Obviously, we would be willing to assist the subcommittee on other issues, as appropriate. In our view, the key issues are: (1) incentives; (2) orphan funding; and (3) small business concerns.

B. Incentives

The liability standard under Superfund has given industry powerful incentives to do three things: more carefully manage hazardous wastes, reduce the generation of waste through pollution prevention, and cleanup old contaminated properties before they pose a serious risk to human health and the environment. The liability rules have accomplished these important objectives without burdensome new regulations, without thousands of new federal bureaucrats, and without prescriptive and costly technology requirements.

Under Superfund, each business uses its own best judgment to avoid liability. One company may choose an aggressive program of pollution prevention. Another firm might carefully scrutinize its waste disposal contractor. A third company may conduct an environmental audit and cleanup its old, abandoned waste sites before they create a hazard to the local community.

In addition, new technologies and cost-effective methods are employed when they make economic sense, not before. Firms are given a compelling reason to avoid creating a risk to human health and the environment. But, they are free to use new technologies when they become available, to apply rigorous cost-benefit analysis, and to consider the unique aspects of their circumstance.

No federal environmental regulatory program can come close to making these claims. Superfund sets a rigorously enforced performance requirement – protect human health and the environment – and then allows the ingenuity of the marketplace to decide how best to achieve it at the lowest possible cost. As the Committee evaluates proposals to replace the liability system, it is imperative that you ask what will take its place. Will it

require substantially more federal intrusion? Will it be more or less cost-effective? And, most importantly, will it lead to the same level of environmental protection?

H.R. 3800 retains the strict, retroactive, joint and several standard provided in current law and thus retains the incentives outlined above. Firms will continue to face potential responsibility for poor waste practices and for unaddressed, abandoned waste sites.

The innovation provided in H.R. 3800, which is similar to recommendations made by EPA's NACEPT Committee on Superfund and the National Commission on Superfund, is to use an informal allocation process to dramatically streamline the determination of liability under the existing liability rules. Under current law, the federal government sues one or more firms to perform a Superfund cleanup who, in turn, sue others to help defray cleanup costs. Ultimately, either through settlement, negotiation, or court order, the private parties resolve their liability with the government and with each other. But, reliance on the courts for this purpose has led to costly and unjustified delays.

Instead, H.R. 3800 uses an allocation process to roughly determine shares among responsible parties. These determinations are expected to allow parties to easily and expeditiously determine their responsibilities with the government and with each other. H.R. 3800 recognizes the importance of the incentives in Superfund's liability scheme, but recommends a faster and more cost-effective way to implement it.

C. Orphan Funding

Although H.R. 3800 retains the liability rules in current law, it makes one important change that could, if implemented improperly, seriously weaken current cleanup efforts. Under current law, the application of joint and several liability means that a liable party, not the federal government, is financially responsible for the acts of other liable parties. This makes sense in many Superfund cases because the harm caused by the polluters – contaminated soil or groundwater – is not readily or causally linked to the activities of any one party. As a result, Superfund considers all polluters to be equally responsible for cleanup costs.

Much has been said about allocating liability among responsible parties. Given the very real difficulties of linking conduct with harm at Superfund sites, such an allocation can only be a rough exercise in equity. It would be a mistake to assume that any court or allocator can accurately calculate the precise percentage of responsibility for every party at a site, as though it were a mathematical equation. It is rough justice, plain and simple.

Generally, EDF supports efforts to use allocation procedures or other alternative dispute resolution procedures to resolve Superfund cases. In cases where all parties are financially viable, it can reduce transaction costs, speed resolution of liability and give all parties greater certainty about their responsibilities.

However, the allocation procedure in H.R. 3800 is not "budget neutral." In the exercise of rough justice, the allocator may assign a share of responsibility to parties who are not viable, who no longer exist, or who, for some other reason, have a limit on their liability. Although current law places the costs for these shares on the other parties at the site, H.R. 3800 proposes that the Superfund trust fund pay for these shares. The federal government would, in effect, write a check to a polluter for costs that the polluter now pays. And, the size of that check would be determined by a rough, unscientific allocation exercise.

Clearly, there is a very real risk that the size of the orphan shares, and hence the cost to the government, could be extreme. Other than some general equitable factors, nothing restrains the allocator from assigning very large shares to the orphan/federal government. Recognizing this risk, H.R. 3800 places a firm, annual cap of \$300 million per year on orphan spending. With an annual, national cap in place, the allocation process faces a vital, built in check to prevent runaway federal obligations.

Understandably, the funding and budget questions are complex. But, orphan funding is a litmus test issue for the environmental community in this reauthorization.

D. Small Business Concerns

The liability system, in its current form, is a one-size-fits-all system. Whether a business is a sole proprietorship or a Fortune 500 conglomerate, the liability process and rules are the same. EDF believes that Congress can and should provide meaningful assistance to small businesses, without changing the structure and underlying incentives of the current liability system.

Given that the liability system is implemented through the court system, small businesses are frequently at a disadvantage in defending themselves in contribution cases brought by larger firms. Even if they only contributed a minimal amount to a Superfund site, the resolution of their liability may take years.

EDF believes that an allocation process, like the one in H.R. 3800, can provide much needed assistance for small businesses. In general, we believe that pending and prospective litigation should be stayed or barred until the allocation process is complete. Settling small businesses should also receive third party lawsuit protection. The allocation process should run on tight timelines, with real incentives to make sure that decisions are made in a timely fashion. As recommended in H.R. 3800, expedited determinations should be made for de minimis and de micromis parties. Small businesses should also receive an "ability to pay" determination and structured settlements to allow such firms to spread out their payments over time.

These recommendations will not allow small businesses to escape their cleanup responsibilities, but they will ease the burden of those obligations.

V. Conclusion

The Environmental Defense Fund is committed to making Superfund work. That is why we have taken part in the NACEPT process, the National Commission on Superfund, and other efforts to bring about meaningful reform to this program. However, we do not favor overhauling Superfund simply for the sake of doing something different.

In many ways, H.R. 3800 strikes the correct balance. It fills a tremendous need for improved public involvement, rationalizes and standardizes an erratic and inconsistent remedy selection process, and promotes a streamlined liability process that provides much needed procedural and fairness improvements to reduce transaction costs. EDF believes that this balanced, centrist approach makes sense.

EDF looks forward to working with the Committee as it moves ahead with this important legislation.

CONCERNED CITIZENS TO SAVE FAYETTE COUNTY, INC. 1985 P. O. Box 75 - Minden, WV 25879 - (304) 469-6247

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Arbana Coz
Margaret Jarrell
Reverend Moore
George Burgess
Kethi Holliday
Helen Powell
Linda Meade-(1986-1991)



STATEMENT BY LARRY ROSE AND LUCIAN RANDALL; CONCERNED CITIZENS TO SAVE FAYETTE COUNTY, INC. 1985 (JULY 14, 1994) (WE THANK CONGRESSMAN RAHALL AND JIM ZOIA FOR AIDING IN SETTING UP THIS MEETING).

PCB POISONING IN MINDEN, WEST VIRGINIA

BACKGROUND:

The people of Minden, West Virginia have been poisoned due to the careless waste disposal of PCB's by the Shaffer Equipment Company. Clean up efforts started fifteen years after the contamination began and will never be completed. Minden is too contaminated! Contaminated with PCB's (Polychlorinated Biphenyals), PCDF's (Furans-when PCB's are burned), and Dixon (Agent Orange).

The Shaffer Equipment Company is a small, family owned business that bought used electrical equipment to be refurbished primarily for the mining industry. Operations at Shaffer's started in the early 1970's in a small community in southern West Virginia; now bankrupt.

Minden is an old coalmining community made up of approximately 350 families. Minden and neighboring Rock Lick lie in a valley in Fayette County, WV, surrounded on three sides by mountains. Arbuckle Creek flows through Minden into the New River where many people fish and white water raft. This creek floods three to seven times a year. Per Capita income is only \$4,000. per year and very few have access to health care.

"Nine Years Struggling for Economic & Social Justice: Fighting to insure Payette County a clean, safe, and healthy environment." page 2

The Shaffer Equipment Company sets along the banks of Arbuckle Creek. During the boom of operation, (1970's) thousands of gallons of PCB laden oils were spilled and poured on Shaffer property. With the regular flooding of Arbuckle Creek, the contaminated soil was carried to people's yards, gardens and on into the New River. The workers at the Shaffer site were forced to burn this oil in a wood burning stove as a source of heat. Mr. Shaffer also gave the oil to residents that was burned inside of their homes. PCBs must be incinerated at extremeley high temperates to be destroyed. When PCBs are burned, they break down to form an even more deadly chemical akin to dioxin. Smoke from these fires filtered through the communities of Minden, Rock Lick and Oak Hill.

Another problem that faces the people of Minden is that neighboring Oak Hill's sewer treatment plant also sets along the Arbuckle Creek and for many years has been overworked. Raw sewage dumps into the Arbuckle Creek and the oder is sickening. Oak Hill town council members promised for more than ten years to the update the facility. In 1990, contruction began and now has been completed but the ATSDR states Arbuckle Creek is still contaminated with E Coli.

In 1989, smoke was noted to be coming from out of a hole in the ground. The WV Department of Energy was called in and at first, said the source of smoke could not be found. Residents fear an underground fire in one of the many coal seams. DOE's last word was, nothing to worry about, even though they never pinpointed the problem. However, this action may have in fact created more PCDFs and Dioxin.

EFFECTS:

Minden residents are for the most part, very poor and depend on various government checks as their monthly income. Others work at minimum wage jobs. Both of these categories of individuals are either without adequate health care coverage or have no coverage at all. The fact is that some are faced with Medicare copayments that sometimes cannot be financially afforded, Medicaid health care providers are not plentiful, and minimum wage jobs do not provide health care coverage. In addition, the health care problems of the residents are compounded by the fact that there are not physicans knowledgeable about chemical effects. Furthermore, how can we expect physicans to become interested in learning about the chemical effects on humans when we have a federal agency the ATSDR preparing inaccurate health assessments and state to the local press, there are no health effects in Minden. However, through our (CCTSFC) own studies which include a door to door health survey, actual physical exams, and testimony from Dr. Hasan Amjad, Oncologist/Hematologist who treats many of the residents there are serious health problems in the Minden residents. What are these illnesses? Minden residents have a higher incidence of respiratory problems, unexplained

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weight loss, (according to Dr. Marvin Legator, Toxicologist at the University of Texas) PCBs exit the body during weight loss and this is when the damage to the body is done, skin rashes, gastronintestinal problems, eye irritations, liver and kidney damage, immune loss and various cancers. The children in Minden score lower on county achievement test, some have learning and behavioral disorders. Young women have a very high incidence of miscarriages and stillbirths, (Vanderbilt Study, 1986). Currently, the CCTSFC is conducting an extensive ongoing health registry in Minden with the assistance of Linda Price King of the Environmental Health Network, Inc. out of Chesapeake, VA. There can absolutely be no dispute that the Minden residents have serious health problems as a result of this contamination.

The property values have dropped and residents obtain statements from the county tax assessor's office that this is a direct result of PCB contamination. The individuals who want to sell and leave are either stuck with the property or it goes at a cheap rate. This sets the stage for absentee or slum landlords who can prey upon transient low-income families to move into houses which are in most cases substandard. The new individuals who move into the community receive the broadcasted message in the press by the EPA and ATSDR that there is no danger in living in Minden. Is the EPA and ATSDR setting the stage to be held liable for human suffering and lives with these individuals in the future? The EPA actually told a new family in April of 1994 that there was no danger or contamination on their property. The family pulled documents supplied by CCTSFC where the EPA themselves had documents contamination in their yard. Is this behavior by the EPA ethical?

RESPONSIBLE PARTIES:

Shaffer Equipment Company, owned by William and Anna Shaffer. Mr. Shaffer, incidently, had cancer but died of a heart attack. Berwin Land Company owned the land sold to Shaffer and other land adjacent to the plant. There are indications that electrical equipment came from virtually all over the U.S. (Illinois-Indiana Power, Walter Reed Hospital, John Hopkins Hospital, and many others!). However, the EPA hs filed suit in Federal Court against Shaffer Equipment Company, Berwin Land and John Hopkins' University. Partial settlement has been completed, but the Minden residents received nothing.

EPA'S/ATSDR'S CURRENT POSITION:

The U.S. EPA has attempted clean up in Minden on three different occasions. To this date, the EPA will admit that there is still contamination at the Shaffer site, but says no more clean up efforts will take place. Their solution now is to spend two million dollars more to seal the site (put up fences, place drainage ditches around the site and tear the Shaffer building down (4500 ppm of PCBs in the building).

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At the May 1994, EPA/ATSDR meeting held for the Minden residents, the ATSDR told the Minden residents that no health care will be provided because their health assessment does not warrant that there are health problems in the Minden residents. The CCTSFC has previously pointed out to the ATSDR serious inaccuracies in their assessment. The ATSDR did not even do a door to door health assessment or even one physical exam on a resident much less talk with Dr. Hasan Amjad who treats some of the residents. At this same meeting, Minden resident told a toxicologist from the ATSDR that she is now diagnosed with cervical cancer. This toxicologist on video tape in part of his response to this individual actually stated that a certain amount of PCBs are GOOD for you and help arrest cervical cancer in some cases. Come on is this ethical behavior of the ATSDR?

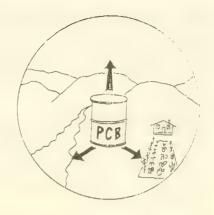
WHAT WE DEMAND:

After nine years of struggle, we demand social and economic justice-that being relocation of the community, compensation, and health care (a free clinic to be established and to work with local physicians such as Dr. Hasan Amjad who treats many of the Minden residents at no charge. We do not want the ATSDR to come back to Minden unless they are going to honestly assess the absolutely ill health effects and provide actual health care to the Minden residents. The ATSDR has actually done more damage to this community and this folks is a Federal Agency. Please provide the Minden residents with the money that pay for the salaries, travel, and other expenses incurred by the ATSDR to prepare an inaccurate report and tell direct lies to this community. This money can go to the desperate need of actual health care for Minden residents. Please help the Minden residents, provide relocation and health care to these human beings.

Edited and Typed by: Sharon Rose, ACSW

Submitted by Larry K. Rose, Chair of CCTSFC TO: Committee on Water Resources and the Environment





WHAT ARE PCBs EXACTLY?

PCBs are a group of chemicals that were used widely in transformers and capacitors, and as additives in industrial fluids and oils, pesticides, paints, copying paper, adhesives, and plastics. In Minden, Shaffer Equipment Co. dumped and burned large quantities of PCB-containing oils from transformers in the 1970's. PCBs do not easily breakdown or decompose in the environment.

HOW DO PCBs TRAVEL THROUGH THE COMMUNITY?

PCBs attach themselves to soil and creek sediments. When Arbuckle Creek floods, PCBs travel through Minden. Also, PCBs can evaporate and travel through the air as mist or vapor. PCBs can breakdown, when burned for instance, into other dangerous chemicals called dioxins and furans, and these, too, can travel through the air and settle out on the community.

HOW CAN PCBs ENTER THE BODY?

- * by coming in contact with Arbuckle Creek water or sediment
- by touching contaminated soil in yards
- * by eating root crops from gardens that are contaminated
- * by exposure to runoff from hillsides and roads where PCB -
 - .. contaminated dirt was dumped
- .* by breathing vapor or mist contaminated with PCBs

(over)

WHAT ILLNESSES CAN PCB EXPOSURE CAUSE?

Skin diseases, eye irritation and infections, liver problems (yellow jaundice, liver and kindney infections), childbirth abnormalities, impotence and sterility, digestive problems, persistent cough, fatigue. PCBs have produced cancer cells in animals. Also, learning disabilities in children.

ARE PCBs REGULATED?

During the late 1970's, the Environmental Protection Agency (EPA) restricted most, but not all, uses of PCBs. There are still many millions of tons of PCBs in existing equipment, in landfills, and free in the environment. The EPA removed PCB-contaminated soil from one spot at the Shaffer plant, but did not address possible PCB, dioxin, and furan contamination throughout the community.

THE CONCERNED CITIZENS TO SAVE FAYETTE COUNTY WOULD LIKE TO KNOW:

- Do you have children that play in Arbuckle Creek or other areas known to be contaminated with PCBs?
- * Do you plant a garden and eat root crops from soil that may have levels of PCB in it?
- * Do you remember of have any information on places where equipment, soil, red dog, etc. was hauled from the Shaffer site and dumped?
- * Would you like to move from Minden/Rock Lick if you were given just and fair compensation for your property and a role in designing a new Minden?

CONTACT THE CONCERNED CITIZENS

For more information:

Sharon and Larry Rose 469-6247 Sue Workman 465-8190 John David 469-9936

January, 1993

11-6-93

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Eunice Hager Sharon Rose Grace & Delbert Lewis Arbana Cox Margaret Jarrell Reverend Moore George Burgess Kelvin Holliday Helen Powell Linda Meade (1986-1991)



Karen Holmes-Westwood Community Involvement Specialist ATSDR (E-32) 1600 Clifton Road, NE Atlanta, GA 30333

Dear Karen:

I am writing on behalf of Concerned Citizens to Save Fayette County in response to the comment period pertaining to the addendum to the ATSDR Health Assessment. I once again assert the "points" in my correspondence that were made to the ATSDR on July 20, 1993 that a complete and new Health Assessment must be made of Minden in order to attain a just and equatible analysis. In October of 1993 the EPA and the state DEP once again sampled the Shaffer's Equipment site (please see the October 27, 1993 Register-Herald article for our protest of procedure and methodology). The analysis is not to be completed until 6-8 weeks, thus this new data as well as the sampling data that Concerned Citizens plans to conduct (in conjunction with Virginia Tech) needs to be incorporated in any new assessment. Listed below are points of concern:

- (1) The Concerned Citizens fully supports the comments made to the ATSDR by the Environmental Health Network and Director, Linda King relating to the Addendum to Minden.
- (2). The past soil and water analysis by the EPA has been flawed (based upon Bob Caron's fraudulent work and the method of analysis using Archlor 1260 as the comparison base in the gas chromatograph instead of 1254 and other derivatives of PCB's found on the site-point put forth time and time again by Technical Advisor, Paul McGhee).
- (3) There are gardens that the first in the direct pathway of contamination and crops grow in contaminated PCB do in tact retain and absorb levels of Contamination. Dr. Marvin tegator, University of Texas Medical Branch and Dr. Theo Colburn, World Wildlife Fund, both concur that residents have and will retain levels of PCB's that will be detrimental to their health.

"Eight Years Struygling for Economic & Social Justice: Fighting to insure Fayette County a clean, safe, and healthy environment." page 2 ATSDR

Gardens are a primary source of food in Minden.

- (4) Many residents do in fact eat wild game from the Minden area and some do have livestock which probably are polluted by PCB's.
- (5) The tree bark samples should be analyzed for PCDF's and Dioxin an analysis included in the assessment.
- (6) There is no "Burm" or protective measure to stop PCB's from migrating from the site and being ditributed throughout the community.
- (7) The site is not secure.
- (8) The main dumping area, the "Pit", has not been analyzed by core sampling.
- (9) The sediment of Minden Mine #3 has not been analyzed.
- (10) The ATSDR needs to work with Dr. Hassan Amjad (Oak Hill, WV) in order to conduct an in-depth health survey of the Minden residents.
- (11) The ATSDR should in fact support the Concerned Citizens in their effort to complete a five year health registry of the Minden Residents and former Shaffer employee, (in conjunction with EHN, Inc.).

Finally, it should be reiterated that a "new" health assessment must be conducted of Minden based on correct facts, analysis, and procedures. What has occurred by the EPA and the ATSDR in Minden, WV is a farce. We ask for only what is just. Far too many have passed away and illness is rampant. As Dr. Wallace, the WV Health Director, who is very supportive of our concerns, stated to members of Concerned Citizens in August of 1993, if something is not done in Minden the problems will work themselves out, for the community will die. The poor and downtrodden should not be condemned by a callous bureaucracy. In the name of social and economic justice the people of Minden must be treated equitably!

Herry Kon

Yours truly,

Larry Rose, Chairperson

cc: Linda King, EHN
Senator Rockefeller
Senator Byrd
Congressman Rahall
State Senator Holliday
Dr. Wallace, WV Department Health
Joe Schock, WV Office of Environmental Health Services
Steering Committee of CCTSFC

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October 8, 1993

The President
The White House
1600 Penn. Avenue
Washington, DC 20500

Thelma Phillips

Dear President Clinton and Vice-President Gore:

For eight years the people of Minden, West Virginia (a former EPA Superfund site, extremely high levels of polychlorinated biphenyls - a carcinogen) have suffered from mismanagement, neglect, and negligence by the EPA, the ATSDR and various West Virginia state agencies. Minden, has had three major EPA/PCB clean-ups during the eight year span (the PCB's were found at the end of 1984 and Minden became the seventh largest EPA Superfund clean-up site in the history of the United States) and is still highly contaminated. The ATSDR released a very inadequate health assessment in August of 93 and concluded that the site is still contaminated, but the community is not at risk. Many of the residents however are ill, dying, or have passed away. The community needs to be relocated, residents compensated and adequate health care provided.

Congressman Rahall (WV) made a request to the EPA Director, Carol Browner, on February 8, 1993 requesting a new investigation of the Minden (EPA) cleanups directed from the Washington EPA office. A response was made to Congressman Rahall by Acting Assistant Director, Richard J. Guimond, on July 8, 1993 stating that there was no problem with the previous Minden cleanups by the EPA (even though the on-side coordinator lied about his college degrees, was forced to resign, and pled guilty to perjury in the state of Maryland) and that the January of 1993 GAO report vindicated the agency of any wrong doing. This analysis of Mr. Guimond is far from correct. The GAO analysis of the EPA/Minden investigation did in fact point to mismanagement and possible coverups by the EPA.

At the present the EPA is scheduled to conduct more soil and water analysis in Minden in October of 93 and the ATSDR has published an addendum to the August 93 Health Assessment still stating that the site (Shaffer's Equipment) is still contaminated, yet the community is not at risk.

The people of Minden have suffered much too long and deserve economic and social justice. I implore you to order a new investigation of the Minden Cleanup from the Washington EPA office, help relocate the residents and seek to provide adequate health care.

Sincerely,

Residents of Minden and Concerned Citizens

"Eight Years Struggling for Economic & Social Justice: Fighting to insure Fayette County a clean, safe, and healthy environment." Environmental & Toxicology International a division of Toxicology International, Inc. Post Office Box 75477, Washington, D.C. 20013 (202)546-7053 (703)273-9873 Facsimile (800) 296-7053

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May 5, 1994

Key-far Recorder
7-14-94
Jany Row Mr. Larry Rose Concerned Citizens to Save Fayette County, Inc. 1985 1.0. Box 75 Minden, West Virginia 25879

He: Minden PCBs

Goar Mr. Rose:

I have completed my personal review of all documents provided to me, and requisitioned by us, under FOIA, from the U.S.E.P.A., U.S. Department of Health and Human Services-ATSDR, the GAO Review requested by Representative Rahall, newspaper articles, letters and documents from your Citizens Group, correspondence to, and from, the U.S. Congress, data from environmental experts such as NUS and Virginia Tech, medical profiles from Vanderbilt University, etc. It is my considered expert opinion that the only summary conclusion from all of this information, and data, is that the Citizens of Minden and Fayette County have not been well served by the numerous activities of the U.S. E.P.A., nor by the reviews of EPA, nor by the ATSDR review of the health complaints. There is a preponderance or government information that seeks only to show that the government has done a good enough job. This is however, not my conclusion as an independent scientist.

It is my considered opinion that:

- 1. The U.S.E.P.A. and the U.S. and West Virginia Governments in support, have allowed the fox to guard the hen house in Minden, West Virginia since at least 1984. No government study, that I have reviewed, currently exists to accurately and realistically answer the question: Why are the residents of Minden sick and how have their illnesses occurred?
- 2. The PCB activities of the Shaffer Equipment Company, directly resulted in gross contamination of the environment and residents of Minden, W Va due to Shaffer's violation of industry practices, EPA regulations on PCBs, and environmental laws, from the 1970s to the demise of their business activities in Minden.
- 3. The EPA allowed an unprincipled scientist to guide a clean-up program that he was not qualified by education, training and expertise to guide. EPA then confounded this mistake by allowing the prior Deputy Project Director, to state that everything they (including he)

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did was okay. This is gross mis-management and unethical Quality Control.

- 4. The use, by the unprincipled EPA Project Coordinator, of a new, unreliable procedure (that falled) to try to extract PCBs from soil was another indication of the tack of scientific management of the clean-up by EPA. ETA did not list Minden as a Superfund Site, but said that it followed Superfund quidelings in the clean-up. These measures are contradictions in terms and procedures, and cannot be mutually compatible. Like many Superfund Site "clean-ups" by EPA, the ETA management approaches to Minden, W. Va. doomed the "Minden clean-up" to failure.
- 5. The behaviors and actions by EPA in Ninden have been scientifically unceliable, and clearly misleading. Statements by EPA that they initially "could not find the Shafter pit" or did not know it was there, and/or wanted Minden residents/Shaffer ex-employees to find it for the dety explanation by the largest environmental protection, agency in the world. EPA once had a reliable contractor, NUS, on this job, but did not utilize NUS to the bast advantage of Minden residents. The residents of Fairfix, VA, who experienced the same unclinical scientist as Project Leader in the Star Petroleum Trasco can state, as did The Court in U.S. v. Shaffer Equipment Cq., 796 F. Supp. 938 (S.D. W. Va. 1992) that neither scientists, the public nor judges will put up with bad science conducted by unethical scientists.
- 6. The results of testing since 1984, and continuing through 1993, show that gross contamination with PCBs did exist and still exists in Minden. The test findings, as published by VA Tech in 1991 and EPA through June, 1993, show that continuing PCB concentrations up to 840 ppm existed outside of direct dumping spill areas and were in fact, compatible with pit area results. The definition of PCB contamination as between 50 and 500 ppm, and "70Bs" as greater than 500 ppm, clearly shows that the continuing PCB levels in Minden define the area as "PCB contaminated". How then, can the ETA consider Minden "cranned-up"?
 - 7. Unfortunately for the residents or Minden their best efforts to seek alternative government assistance through the U.S. Congress have also gone astray. The GAO considered the EPA measures appropriate out never reviewed the EPA clean-up methods and did not interview the former Project Manager. The GAO report is thus

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inherently flawed and of little value to me as a scientist. ATSDR did not work with the one Minden physician who knew and treated the residents. When presented with the Vanderbilt data on adverse health effects ATSDR provided its typical response "the public health implications of this exposure therefore cannot be assessed".

8. It is my conclusion that most government efforts have centered around not discovering the health impact of the PCBs on the Minden residents in their home environments. I have seen no testing on PCDDs, PCDFs, dioxins, home surface levels of PCBs, air levels of PCBs, estimations of dermal dose, estimation of food supply dose, etc. ASTDR could not conclude with certainty about consumption of snapping turtles contaminated with PCBs. Why did they not conduct a sampling survey for same and conduct a study to answer this question? The entire pattern of ATSDR was to find uncertainties and then to throw up their hands with an "I don't know" attitude. Row does this approach make the residents of Minden and Fayette County recover their health, feel better, or even learn what they should do to reduce exposure to PCBs?

Millions of dollars have been spent by the U.S. Government in Minden with the only positive result for Minden being the shipping of some PCB contamination to Alabama. Little has been accomplished to improve the health of Minden residents or to explain to them their illnesses. The toxicological implications of the health profiles show an unmistakable correlation between the illnesses and contamination by an aromatic, chlorinated hydrocarbon. Since PCBs are, the known chemical identified why has the link to the toxic isomers of PCBs not been studied? The EPA ct_al. reports act as if we scientists do not know that certain PCB isomers are toxic and others are not. The usc_of "Aroclor" analysis, whether using 1260, 1254, or 1242, etc., in the 1500s, is another usemplained and mystifying methodogical approach by EPA in the wary used attific study of Minden, W.Va.

The only approach that can help Minden, W Va. residents at this time is to get the government out of its cleanup. As the tenth anniversary of this flasco approaches, clear, objective minds are needed, not more government reviews to state that government reviews show that government has done its job. Minden, W. Va is out of time.

I urge Senator Bryd to introduce a bill in Congress to authorize the expenditure of funds, as necessary, to assist in the complete evaluation and remedial cleanup of PCBs in Minden, the

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purchase and demolition of all contaminated homes, and the necessary medical surveillance and treatment of all ill residents. I urge that the National Academy of Sciences be requested to name a Committee on Toxicology to review the current status of this matter. I strongly urge the naming of Dr. Ian Nisbet, Ph.D., known to EPA and scientists throughout the U.S., as a man of indisputable integrity and highly knowledgeable on PCBs, to head this Committee.

Sincerely,

Kolard X Simore Robert K. Simon, Ph.D. Principal Scientist

cc: enclosures as stated



United States General Accounting Office Washington, D.C. 20548

Office of Special Investigations

January 5, 1993

The Honorable Nick J. Rahall, II Chairman, Subcommittee on Mining and Natural Resources Committee on Interior and Insular Affairs House of Representatives

Dear Mr. Chairman:

In your March 18, 1992, letter and subsequent discussions with your staff, you requested that GAO determine the status of several issues that you raised concerning the Environmental Protection Agency's (EPA) management of hazardous waste removal at the Shaffer Equipment Company in Minden, West Virginia. GAO did not independently assess EPA's cleanup methods at the Shaffer site or EPA's internal review of a former On-Scene Coordinator's site management.

Your letter expressed concerns about (1) EPA's repeated efforts to clean up the site; (2) area residents' concerns that high levels of polychlorinated biphenyl (PCB) continue to threaten public health and safety; and (3) the EPA review of site management by the On-Scene Coordinator who had resigned because of questions about his academic credentials. You requested that GAO investigate allegations of improper EPA oversight of contractor activities at the Shaffer site. On July 20, 1992, at which time this report was requested, we briefed your office on the review's preliminary findings.

In brief, EPA initiated cleanup of the Shaffer site's PCB contamination three times between 1984 and 1990 although, according to EPA officials, the Shaffer site had not been designated a Superfund site on the National Priorities List. A local citizens group, Concerned Citizens To Save Fayette County, continues to voice concerns over what it considers to be indicators of danger posed by the Shaffer site, including allegations that an on-site building and an uncleaned pit contain PCB contamination, local residences have burned PCB-contaminated oil from the Shaffer site, and inadequate fencing allows individuals continual access to the site. As of November 1992, EPA was reviewing soil samples that were taken by the citizens group from the Shaffer site. The citizens group alleged that the soil samples showed high PCB concentrations.

In addition, EPA advised that an internal review of management of the Shaffer site cleanup, completed May 21, 1992, had concluded that the previous On-Scene Coordinator, who resigned in March 1992, had properly managed the site cleanup. However, the citizens group continues to express its displeasure with the internal investigation of the Shaffer site. We neither found nor were provided any evidence to support the allegations of improper contractor oversight by EPA. Because of ongoing litigation involving EPA and its management of the Shaffer site cleanup, we did not interview the former On-Scene Coordinator.

EPA CLEANUP ATTEMPTS AND CITIZEN CONCERNS

EPA Cleanup Attempts

EPA began its PCB removal operation at the Shaffer Equipment Company on December 28, 1984. The company at that time built electrical substations for the local coal mining industry and stored unneeded, outdated, and damaged transformers on the property. According to an EPA Region III official, the cleanup of the Shaffer site was designated a Superfund removal action under Superfund authority. However, the Shaffer site itself was not a Superfund site because it had failed to meet EPA's criteria for a Superfund classification during evaluations in January and December 1989.

Although EPA certified the Shaffer site as a completed cleanup project in 1987, the agency had to conduct removal actions in 1989 and 1991. According to a Region III official, EPA's policy was, and is, to consider alternative options to landfilling contaminated waste. EPA, therefore, attempted to use a new solvent-extraction technology at the Shaffer site. However, the new technology was unsuccessful, and EPA landfilled the contaminated soil and certified the cleanup as complete in 1987. In 1989, because of citizen concerns, EPA returned to the site to remove and dispose of 21 drums left at the site. In a third attempt in November 1990 to clean up the site, again in response to citizen concerns, EPA removed and disposed of contaminated soil.

The government's action seeking recovery of cleanup costs against the Shaffer Equipment Company was dismissed on June 17, 1992, because government counsel failed to disclose the EPA On-Scene Coordinator's misrepresentations of his academic credentials. <u>United States v. Shaffer Equip. Co.</u>, 796 F. Supp. 938 (S.D. W.Va. 1992). On August 13, 1992, the government appealed the dismissal.

Citizen Concerns

In 1985, local residents concerned about the hazardous levels of PCB at the site formed a citizens group to communicate with EPA. 'According to the citizens group, soil samples taken in late 1991 at the site by the group indicated that PCB contamination still existed at levels greater than EPA standards permit. As of November 1992, an EPA Quality Control Reviewer was reviewing the samples and the test results to determine their accuracy. According the current EPA On-Scene Coordinator for Shaffer, he will review the Quality Control Reviewer's work. Depending on the results of these reviews, EPA may return to the site for additional sampling.

Members of the citizens group also alleged that Shaffer Equipment Company had given or sold residents PCBcontaminated oil to burn as a source of heat in their homes. Because neither residents nor their homes have been tested, the citizens group is concerned about potential exposure to dioxin, a hazardous by-product created when PCB-contaminated oil is burned. The current EPA On-Scene Coordinator told us that he had no personal knowledge of the issue and recalled no discussion of it. Because of ongoing litigation involving the former On-Scene Coordinator, we did not determine if he had knowledge of the issue. The U.S. Center for Disease Control's Agency for Toxic Substances and Disease Registry is currently conducting a health assessment of the Shaffer site, to help EPA determine the need for action to mitigate exposure to hazardous substances and for additional health studies or monitoring techniques. While an official of this agency has said that it plans to address the health concerns of the local residents, the agency will not officially comment on health and safety issues until the assessment is completed in December 1992.

The citizens group was also concerned that contamination within the stone building used by the Shaffer Equipment Company had never been cleaned up. According to a July 5, 1990, EPA report, the "PCB contamination inside the [Shaffer] building does not pose a threat of release by fire. As long as the building is maintained, no PCBs of significance could be released."

In addition, during our visit to the Shaffer site, a former Shaffer employee and citizens group member alleged that a pit on the Shaffer site had had thousands of gallons of PCBs dumped in it over the years. According to the former employee, no cleanup action had been taken at this location. The current EPA On-Scene Coordinator told us that he had no knowledge of the issue and recalled no discussion of it. According to the On-Scene Coordinator,

should EPA return to the Shaffer site for additional sampling, he will investigate the issue. Again, we did not determine if the former On-Scene Coordinator had knowledge of the issue.

During a site visit, we observed that the fence put up by EPA to partially enclose the 1.1-acre Shaffer property does not entirely limit access to the site. A local resident told us that people continue to walk through the site. According to an EPA official, EPA makes the decision to fence a site on an individual site basis.

EPA REVIEW OF PREVIOUS SITE MANAGEMENT

In March 1992, the then EPA On-Scene Coordinator for the Shaffer site, Robert E. Caron, resigned as a result of questions raised over his academic credentials. Following the resignation, EPA conducted an internal review of the cleanup sites that he had managed and concluded that the Shaffer site had been properly managed. However, the citizens group continued to express concerns about both the EPA internal review and EPA's management of the site.

The current On-Scene Coordinator, a regional colleague of the former On-Scene Coordinator, conducted EPA's internal review of the former Coordinator's management of the Shaffer site cleanup. The reviewer had previously been involved with the Shaffer site cleanup as Deputy Project Officer. He will also, as stated previously, review the findings of the ongoing EPA Quality Control Review. According to citizens group representatives, the management review did not address many of the issues raised by local residents, including allegations that a PCB waste pit at the Shaffer site had never been cleaned up.

According to Region III officials, the former On-Scene Coordinator's decisions regarding the Shaffer site had been reviewed and approved by EPA officials before they were implemented.

ALLEGATIONS OF IMPROPER EPA CONTRACTOR OVERSIGHT

We investigated allegations of improper activity by Shaffer site contractors and the possibility that EPA had paid more for the Shaffer cleanup than it has publicly stated. To determine the credibility of these allegations, we reviewed numerous documents and interviewed individuals who might

²Mr. Caron pled guilty in May 1992 to violating 18 U.S.C. § 1623 (1988), making a false declaration before a grand jury or court, regarding his misrepresentations of his academic credentials.

EPA/Shaffer Site Cleanup GAO/OSI-93-3

verify the allegations. These individuals could provide no specific information to support the allegations, and we found no other evidence to support them.

During this review, we interviewed officials of the EPA Region III, Department of Justice, Agency for Toxic Substances and Disease Registry, West Virginia Department of Health, and West Virginia Department of Natural Resources. We also interviewed members of Concerned Citizens To Save Fayette County, including a former Shaffer employee, and visited the Shaffer site. Additionally, we examined numerous documents, including EPA's pollution reports and final reports on the site, and pertinent reports, studies, and correspondence.

If you have any questions, please contact Houston Fuller, Assistant Director for Energy and Environmental Crimes, at (202) 272-5500.

Sincerely yours,

Richard C. Stiener

Director

may



Hassan Amjad, M.D., F.A. C.P., F. C. C.P.

1020 N. EISENHOWER DRIVE BECKLEY, WEST VIRGINIA 25801 TELEPHONE: (304) 252-1600

PCB is known to cause immune problems and tumor in animals. Because PCB remains in the body for more than 500 years side effects, can be life long problem.

Most people that live around Shafer Equipment Company showed high levels of PCB in fats. PCB has potential toxic effects, that is why it is banned.

Some of the symptoms of PCB exposure are symptoms of Red Light Symptoms seen in Minden residents.

If PCB is non-toxic than why was it banned. Obiviously PCB is toxic and people that are exposed should be taken care of. There is a very high incidence of Cancer and other diseases in Minden residents.

There are many residents around the Shafer equipment are dead due to cancer infact almost every household around the area has several member died of cancer.

It is my personaly belief based on available scientific data, blood and fat results of Minden residents, that many of them will have serious sideeffects for the rest of their lives, they should no more be exposed to further toxic chemicals and should be relocated if desired and compensated someway by federal government like other similar localities in the country.

Sincerely Remains

HASSAN AMJAD, M.D.

TESTIMONY OF

Rena I. Steinzor

Legislative Counsel
American Communities for Cleanup Equity

before the

United States House of Representatives

Subcommittee on Water Resources and Environment

of the

Public Works and Transportation Committee

HEARING ON SUPERFUND REFORM

July 14, 1994

Washington, D.C.

Mr. Chairman and members of the Subcommittee, my name is Rena Steinzor, and I am legislative counsel for American Communities for Cleanup Equity (ACCE), a national coalition of some 100 local governments in a dozen states organized to advocate the passage of Superfund reform legislation. I appreciate the opportunity to appear before you today to explain why all of the national municipal organizations support the Clinton Administration Superfund bill and to urge you to enact it into law as soon as possible.

ACCE, the National Association of Counties, the National Association of Towns and Townships, the National League of Cities, the National School Boards Association, and the United States Conference of Mayors are all on record as supporting passage of the Clinton Administration Superfund bill this year. We are able to take this position because the bill contains meaningful relief for local governments caught in the Superfund liability system and because we believe that the bill will expedite and improve the cleanup which is so vital to the communities we represent.

As you know, the Clinton bill contains two distinct types of relief for local government. First, when counties, cities, and towns or others are deemed potentially responsible parties (PRPs) because they sent ordinary garbage and sewage sludge to Superfund sites, the legislation would cap their aggregate liability at ten percent of total cleanup costs. Second, when municipal governments are the owners or operators of such sites, the legislation requires that they be given an opportunity to demonstrate that they lack the ability to pay their allocated share of such costs.

Both of these provisions were developed after lengthy negotiations among Superfund's stakeholders, in the context of EPA's NACEPT advisory group and the National Commission on Superfund, and later with representatives of EPA and the Department of Justice as they drafted the Clinton Administration bill. We are grateful for the consideration we were given by everyone in the process, and we especially appreciate the support of the manufacturing sector PRPs who are ably represented on the panel with me today.

I am making a special point of mentioning the private sector PRP community because for several years, as you know, these companies not only were adamantly opposed to

any special relief for local governments, but had filed third-party lawsuits against counties, cities, and towns in courts throughout the country. Local governments demonstrated their seriousness about obtaining meaningful relief in a lengthy and spirited legislative campaign which eventually persuaded these companies of the political and substantive merits of our position. However, it is also true that industry support for the Clinton bill's provisions to help local governments is offered in the remarkable spirit of compromise and consensus that has characterized this process, and I would like to spend the remainder of my time focusing on that point.

Mr. Chairman, I am a veteran of the last Superfund reauthorization; indeed, I spent those four and a half long and painful years as staff counsel for the Energy and Commerce Subcommittee which was then chaired by Jim Florio. That process was characterized by pitched battles over virtually every significant issue, and there was -- quite literally -- not even a glimmer of consensus among Superfund's key stakeholders until the very end of the process when we united in a last-ditch effort to persuade President Reagan to sign the bill so we would not have to do it all over again. In the context of that history, what you see before you today is truly a political and legislative miracle, and I implore you to seize the moment and act on it before the miracle and the momentum are lost.

In recent days, you have heard testimony from groups urging you to slow the process down so that you can consider a radical reform proposal: conversion of Superfund into a public works program through the repeal of retroactive liability. Those urging you to reconsider and delay are in a distinct and isolated minority. While they certainly have a right to express their opinion to anyone who will listen, it would be tragic for all concerned if they are able to derail a timely reauthorization of this important program by pushing the same discredited proposals that have been repeatedly rejected by Congress and the rest of Superfund's stakeholders for close to a decade.

Versions of the proposal now advocated by the Alliance for a Superfund Action

Partnership (ASAP) have been circulating on Capitol Hill since 1985. These proposals have
never garnered support from a critical mass of Superfund's stakeholders and there is

absolutely no reason to think they will achieve any wider acceptance today. The first and foremost reason is that, to be credible, the ASAP proposal will require billions of dollars each year in new taxes on industry. The industries that would be compelled to pay these taxes are absolutely unwilling to do so and, in the face of their opposition, new taxes will not pass. You have heard a great deal of confusing information about exactly who in industry supports the ASAP proposal. If you are even remotely interested in these assertions, I urge you to compare a list of ASAP members with the long list of trade associations and companies that support the Administration bill.

Beyond the fatal issue of new taxes, the ASAP proposal does not address how a Superfund public works program could be implemented without perpetuating the contractor problems that plague EPA. Study after study has demonstrated that when the government conducts a cleanup, it is significantly more expensive than when the private sector undertakes such work. Private companies have an obvious incentive to watch every penny, while EPA has difficulty keeping capable staff to conduct effective contractor oversight. ASAP has little to offer us on this crucial question.

Buried deep in its position papers are three possible solutions: we could turn the entire Superfund program over to the states, using criteria that are not specified. Or, we could force industry to continue to assume responsibility for the site, with cleanup costs reimbursed by the government, a proposal which would be very unpopular if it ever gained widespread attention. Third, ASAP suggests that we enlist the assistance of another federal agency expert in contracting matters to help EPA -- but it does not name which agency it has in mind. Until and unless ASAP gives us a serious and well-developed proposal on how to curb EPA's contractor problems, its effort to push a public works approach cannot be considered credible.

Even if we were willing to tolerate the inefficiencies of the current system and overlook ASAP's failure to deal with these crucial questions, we should not dismiss the impact its proposal would have on the development of the technologies we so badly need to clean up the sites over the long term. By disconnecting American industry from the sites

through the repeal of retroactive liability, we would set up a situation where the Army Corps of Engineers and EPA were our first and last hope to push technology to the point where we can walk away from this problem and turn our attention to other pressing environmental concerns. I mean no disrespect to those worthy federal agencies when I say that no one who is familiar with the intractable technical difficulties presented by Superfund sites can contemplate such a situation with equanimity. The simple fact is that we need American industry's creativity, determination, and financial resources to repair the destruction to our environment that toxic waste disposal has caused. It is both appropriate and necessary that those who produced the waste pioneer new technologies for cleaning it up.

Thank you for the opportunity to testify today. I would be pleased to answer any questions you may have.

THETINOS' OF SKERLLYN BURNETT YOUNG BEFORE SUBCONCITTES ON WATER RESOURCES AND THE ENVIRONMENT, OF THE EQUEE CONDUCTEE ON FUBLIC WORKS AND TRANSPORTATION WITH RESPECT TO SUPERFUND REAUTEORISATION

July 14, 1994

GOOD MORNING MEMBERS OF THE SUBCOMMITTEE.

I AN SHERILYN BURNETT YOUNG AND I AM AN ATTORNEY IN PRIVATE PRACTICE WITH THE LAW FIRM OF RATH, YOUNG, PIGNATELLI AND OYER, P.A. OF CONCORD, NEW MANDSHIRE. I HAVE BEEN PRACTICING IN THE ENVIRONMENTAL AREA SINCE 1982. I BECAME INVOLVED IN ONE OF THE EARLIEST SUPERFUND SITES IN THE COUNTRY, IN 1982, A SITE CALLED THE KEEFE ENVIRONMENTAL SERVICES SITE IN EPPING, NEW HAMPSHIRE. THIS WAS A SITE ORIGINALLY APPROVED UNDER RORA TO ACCEPT HATARDOUS WASTES FROM GENERATORS AND TRANSPORTERS AROUND THE REGION. ALL OF THE PARTIES INVOLVED IN THE SITE PAID TO SEND THEIR WASTE TO THE SITE FOR APPROPRIATE TREATMENT AND DISPOSAL. THE OWNER AND OPERATOR OF THE SITE BADLY MISHANDLED THE WASTE WHICH HE RECEIVED, AND THE SITE ULTIMATELY ENDED UPON ON THE SUPERFUND LIST.

OVER 160 PARTIES WERE NAMED BY EPA AS POTENTIALLY
RESPONSIBLE PARTIES ("PRPS") AND AT THE TIME THERE WERE FEW CASES
DECIDED AND VERY LITTLE GUIDANCE AS WE STRUGGLED TO REACH A
GLOBAL SETTLEMENT WITH THE UNITED STATES GOVERNMENT, THE STATE OF
NEW HAMPSHIRE, THE TOWN OF EPPING AND ALL THE OTHER PARTIES
INVOLVED.

SINCE THOSE EARLY BEGINNINGS I HAVE BEEN INVOLVED IN
NUMEROUS SUPERFUND SITES THROUGHOUT THE NEW ENGLAND REGION.
SURPRISINGLY, NEW HAMPSHIRE ALONE HAS SEVENTEEN (17) SUPERFUND
SITES, AND ONE UNLUCKY MUNICIPALITY WHICH I REPRESENT, THE TOWN
OF LONDONDERRY, NEW HAMPSHIRE, HAS THREE (3) SUPERFUND SITES
WITHIN ITS BORDERS, AND IS A NAMED PRP IN TWO OF THEM. LIKE
EVERYONE ELSE, I AGREE THAT SUPERFUND IS IN NEED OF A MAJOR
CLEANUP OF ITS OWN PROGRAM. I WOULD LIKE TO HIGHLIGHT SOME OF MY
CONCERNS AND ILLUSTRATE THE POINTS WITH SPECIFIC EXAMPLES FROM MY
EXPERIENCE.

I. FIRST, THE PROCESS SIMPLY TAXES TOO LONG. I MEASURE MANY OF MY CASES AS COMMENCING "BC", (BEFORE CHILDREN) AND MY OLDEST CHILD IS NOW 10 YEARS OLD. THE 1982 KEEPE SITE CASE THAT I SPOKE OF WAS ONLY RECENTLY SETTLED AS LATE AS DECEMBER 1992.

AND, UNFORTUNATELY, THESE TEN-YEAR-PLUS TIME FRAMES ARE THE RULE, NOT THE EXCEPTION, IN THE SUPERFUND CASES I AM INVOLVED IN.

EVERYONE RECOGNIESS THAT TRANSACTION COSTS FOR SUPERFUND CASES ARE A STAGGERING PORTION OF THE TOTAL COSTS. THESE DELAYED AND LENGTHY CASES ARE ONE OF THE BIGGEST REASONS FOR THE ESCESSIVE COSTS.

WHAT TO DO ABOUT IT? WE MUST STREAMLINE THE REMEDIAL STUDIES, THE REMEDIAL DECISIONS, THE REMEDIAL ACTIONS, AND EXPEDITE NEGOTIATIONS AMONG THE PRPS AND THE GOVERNMENTAL ENTITIES. CONGRESSMAN ZELLIFF'S BILL, H.R. 4161, WOULD DO THE FOLLOWING:

A. PROVIDE FOR GREATER STATE INVOLVEMENT, AND WHEREVER POSSIBLE, ALLOW THE STATE TO CARRY OUT THE RESPONSE ACTIONS AND COST RECOVERY CASES ALONE. ONCE THE STATE IS GIVEN AUTHORIZATION, IT WOULD BE THE PRIMARY REGULATOR, AND THE EPA WOULD ACT IN ITS GVERSIGHT ROLE TO ENSURE REGIONAL AND NATIONAL CONSISTENCY, AS NECESSARY.

OUR EXPERIENCE WITH THE NEW HAMPSHIRE DEPARTMENT OF
ENVIRONMENTAL SERVICES HAS BEEN A VERY POSITIVE ONE. IT HAS
PROVEN ITSELF TO BE PLEXIBLE, CREATIVE, AND WILLING TO PURSUE NEW
INITIATIVES, WHILE AT THE SAME TIME BEING PRAGMATIC ABOUT
DECISIONS MADE. IT IS ALMASY LOOKING FOR AN EARLY AND ACCEPTABLE
RESOLUTION, IS CONSCIOUS OF TRANSACTION COSTS, AND COOPERATES
WITH ITS REGULATED COMMUNITY TO MOVE THE PROCESS ALONG IN THE
LEAST COSTLY ACCEPTABLE MANNER. IF THE STATE OF NEW HAMPSHIRE
WERE ALLOWED TO IMPLEMENT THE SUPERFUND PROCESS, TRANSACTION
COSTS WOULD BE CONSIDERABLY REDUCED, AND THE TIME FRAME FROM
INITIAL STUDIES TO FINAL CLEANUP ACTION WOULD BE EXPEDITED.

- EXPEDITE THE REMEDIAL SELECTION AND CLEANUP. CONGRESSMAN ZELIFF'S BILL ESTABLISHES A NEW FRAMEWORK FOR REMEDY SELECTION AND CLEANUP ACTION. THE COMPONENTS INCLUDE IMMEDIATE RISK REDUCTION MEASURES ("IRRMS") TO MINIMIZE AND FREVENT ANY ACTUAL AND IMMINENT AND SUBSTANTIAL ENDANGERMENT TO PUBLIC ONCE THESE IMMEDIATE RISKS ARE ADDRESSED, IT PROVIDES HEALTH. FOR SCORING OF THE RESIDUAL RISKS POSED BY THE SITE, AND THE DEVELOPMENT OF A LONG-TERM RESPONSE PLAN ("LTRP"). GOING BACK TO THE EARLIER EXAMPLE OF THE KEEPE SITE, WHILE WE REACHED SETTLEMENT AMONG THE PARTIES ON DECEMBER 1992, THE SITE HAS YET TO HAVE THE CLEANUP ACTION COMPLETED, NOW MORE THAN 12 YEARS SINCE THE PROCESS REGAN. A PROCESS SUCH AS THE ONE OUTLINED IN H.R. 4161 WOULD SIGNIFICANTLY ALTER THE APPROACH TAKEN AT THE KEEFE SITE, AND SHOULD SIGNIFICANTLY EXPEDITE FINAL CLEANUP MEASURES.
- C. FACILITATE FASTER NEGOTIATIONS AMONG PARTIES TO REACH GLOBAL SETTLEMENTS. CONGRESSMAN SELIFF'S BILL WOULD CREATE A BINDING PROPORTIONAL ALLOCATION OF LIABILITY SYSTEM WHICH WOULD RESULT IN AN ALLOCATION OF COSTS AMONG PARTIES WITHIN 18 MONTHS OF THE COMMENCEMENT OF THE PROCESS. ONE OF THE CASES IN WHICH I AM INVOLVED HAS ABOUT THIRTY PARTIES. WE HAVE SPENT OVER THREE YEARS MEGOTIATING ALLOCATION ISSUES, AT GREAT TRANSACTION COSTS TO EACH OF THE PARTIES, AND TO DATE WE RAVE FAILED TO REACH A FINAL, GLOBAL SETTLEMENT AMONG THE GROUP. IN SOME INSTANCES, THE

LEGAL FEES PAID ARE GREATER THAN THE PARTY'S SHARE OF ACTUAL RESPONSE COSTS INCURRED. THE SELIFF APPROACH IS A MUCH SANER, MORE DICIPLINED ONE, IMPOSING DISCIPLINE UPON THE PARTIES BY SETTING A SHORT TIME FRAME WITHIN WHICH A SINDING ALLOCATION OF LIABILITY MUST BE REACHED. THIS WILL AVOID THE EXCESSIVE MEGOTIATION COSTS MANY PARTIES INCUR. EQUALLY AND PERHAPS MORE IMPORTANTLY, IT WOULD ALSO AVOID EXORBITANT LITIGATION FEES IN COURT DISPUTES OVER COST RECOVERY. ONE OF THE EARLIEST SUPERFUND CASES TO GO TO TRIAL IN NEW HAMPSHIRE, THE OTTATI AND GOSS CASE, IS INFAMOUS FOR THE NUMBER OF YEARS TAKEN TO COMPLETE THE TRIAL, AND THE ANOUNT OF TRANSACTION COSTS INVOLVED. AGAIN, THE TOTAL LITIGATION FEES SPENT BY THE PARTIES IN THAT CASE WERE A SIGNIFICANT PERCENTAGE OF TOTAL RESPONSE COSTS AT THE SITE.

II. WE NOST RESTRUCTURE THE LIABILITY SCHEME AS IT
GURRENTLY EXISTS. I RECOGNIZE THAT SOTH THE ADMINISTRATION'S
BILL, H.R. 3800, AND CONGRESSMAN SELIPP'S BILL BOTH EXEMPT SOCALLED "DE MICROMIS" PARTIES, THOSE THAT HAVE CONTRIBUTED VERY
SMALL AMOUNTS OF HAZARDOUS OR MUNICIPAL SOLID WASTE TO A SITE,
AND I SUPPORT THIS. FURTHER, BOTH BILLS STRENGTHEN THE
PROTECTION FOR DE MINIMIS PARTIES, MINIMIZING THEIR TRANSACTION
COSTS AND LIMITING THEIR EXPOSURE OF LIABILITY. ONCE AGAIN, I
SUPPORT THOSE INITIATIVES. CONGRESS SHOULD ALSO ADDRESS BY
STATUTE THE LIABILITY OF LENDERS AND FIDUCIARIES, IT SHOULD
CLARIFY THE USE OF THE INNOCENT LANDOWNER DEFENSE, IT SHOULD

PROVIDE PROTECTION AGAINST LIABILITY FOR GRANTERS OF CONSERVATIOE EASEMENTS, AND IT SHOULD CREATE INCENTIVES FOR REDEVELOPMENT OF ALREADY POLLUTED SITES. ONE OF THE SADDER RESULTS OF THE SUPERFUND PROCESS IS THAT WHEN NEW COMPANIES LOOK TO MOVE TO NEW HAMPSHIRE, THEY PREFER TO DEVELOP A PRISTINE PIECE OF LAND, FORMERLY UNTOUCHED, RATHER THAN RETROFIT A CURRENTLY ABANDONED PACILITY WHICH MIGHT OTHERWISE BE SUITABLE FOR THEIR MEEDS, BECAUSE OF THEIR GREAT FEAR OF LIABILITY UNDER SUPERFUND.

CONGRESSMAN ZELIFF'S BILL OFFERS PROTECTION FOR SUCH DEVELOPERS, AND AT THE SAME TIME PREVENTS A WINDFALL FOR THOSE DEVELOPERS WAS ESSENTIFF.

ALL OF THESE IMITIATIVES ARE VERY IMPORTANT, BUT I BELIEVE CONGRESS MUST BE PREPARED TO GO FURTHER, AND ACTUALLY ELIMINATE THE RETROACTIVE LIABILITY COMPONENT OF THE SUPERFUND ACT. THIS HAS BEEN PERHAPS ONE OF THE MOST BITTERLY DEBATED PORTIONS OF THE BILL SINCE ITS 1982 ENACTMENT. PARTIES THAT I HAVE REPRESENTED HAVE FOUND IT INCOMPREHENSIBLE THAT THEY COULD BE HELD JOINTLY AND SEVERALLY RESPONSIBLE FOR SIGNIFICANT COSTS AT THESE SUPERFUND SITES BECAUSE OF ACTS TAKEN PRIOR TO THE ENACTMENT OF THE SUPERFUND LAW -- ACTS WHICH WERE COMPLETELY LEGAL AT THE TIME. IN FACT, IN THE KEEPE SITE, THOSE PARTIES SENT THEIR WASTE THERE AT THE DIRECTION OF THE REGULATORS TO ENSURE THAT THEIR WASTE WERE SEING PROPERLY HANDLED. NEVERTHELESS, THEY STILL WERE HELD STRICTLY LIABLE AND RETROACTIVELY LIABLE FOR HAVING SENT

Testimony of Sherilyn Burnett Young July 14, 1994

THEIR WASTE TO THE SITE. THE RETROACTIVE NATURE OF THE LIABILITY IS ESPECIALLY UNFAIR BECAUSE THE BURDEN FALLS ON THOSE THAT ARE CURRENTLY SURVIVING, AS OFFICED TO, IN SOME CASES, THOSE WHO WERE THE LARGEST CONTRIBUTORS BUT HAVE NOW GONE OUT OF BUSINESS. EXAMPLE, IN MANY OF THE MUNICIPAL SUPERFUND SITES IN NEW HAMPSHIRE. THE GREATEST CONTRIBUTORS OF HAZARDOUS WASTE OVER THE YEARS OF OPERATION OF THESE OLD TOWN DUMPS WERE COMPANIES, SUCH AS OLD MILLS. THAT LONG AGO WENT OUT OF EXISTENCE. RETROACTIVE NATURE OF LIABILITY IMPOSES LIABILITY ON THOSE THAT ARE THE LAST TO BE INVOLVED WITE THE SITE, OR, IN THE CASE OF MUNICIPAL SITES, CURRENT TAXPAYERS WHO MAY NOT EVEN HAVE LIVED IN THE COMMUNITY DURING THE TIME THE DUMP WAS OPERATING. THERE ADR THE FOLKS WHO ARE REQUIRED UNDER JOINT AND SEVERAL LIABILITY TO DICK UP THE TAB OF CLEANING UP HAZARDOUS WASTE SITES, SCHETINES LARGELY CAUSED BY OTHER PARTIES.

THIS RAISES ANOTHER ISSUE, THE USE OF THE ORPHANED SHARE PROVISION. WHILE THE STATUTE HAS PROVIDED FOR THE ORPHANED SHARE TO BE PAID FOR OUT OF SUPERFUND MONIES, IN MY EXPERIENCE THERE HAS BEEN BUT ONE CASE OUT OF THE 17 SITES IN NEW HAMPSHIRE AT WHICH THIS HAS BEEN USED. THE GOVERNMENT HAS SIMPLY BEEN UNABLE OR UNWILLING TO USE THE ORPHANED SHARE PROVISION AS IT CURRENTLY EXISTS TO HELP TO PAY FOR COSTS INCURRED BY THOSE UNABLE TO PAY. WE MUST MAKE THE ORPHANED SHARE PROVISION MORE PLEXIBLE, AND MUST ENCOURAGE THEIR MORE PROQUENT USE AT SITES WHERE THERE ARE

CLEARLY DEMONSTRATED CRPHANED SHARES. THE PENALTY CURRENTLY
EXACTED FOR UTILIZING SUPERFUND MONIES FOR AN ORPHANED SHARE IS
THE REQUIREMENT OF FOLLOWING THE FEDERAL PROCUREMENT REGULATIONS,
WHICH, CONVENTIONAL WISDOM SUGGESTS, ADDS A MINIMUM OF \$1,000,000
IN CLEAN UP COSTS TO AN AVERAGE SITE. CONGRESS MUST ELIMINATE
THE REQUIREMENT THAT PRIVATE PARTIES MUST FOLLOW FEDERAL
PROCUREMENT REQUIREMENTS WHEN FEDERAL MONIES ARE USED TO FAY FOR
CRPHANED SHARES.

III. FINALLY, WE MUST BE MORE PRAGMATIC IN OUR SELECTION OF REMEDIES, TAKING INTO CONSIDERATION THE ECONOMIC IMPACT TO THE PARTIES AND THE COMMUNITY OF THE SELECTED REMEDY, AND ADDRESSING THE ACTUAL RISKS, NOT THE IMAGINED RISKS, POSED BY A SITE.

IN MANY OF THE CASES IN WHICH I AN INVOLVED, THE SELECTION OF REMEDY INCLUDES THE TREATMENT OF GROUNDWATER AT THE EDGE OF THE LANDFILL TO DRINKING WATER QUALITY STANDARDS. THIS IS REQUIRED DESPITE THE FACT THAT THE COMMUNITY ITSELF HAS NO INTENTION OF EVER USING THE WATER AT THE EDGE OF THE OLD TOWN DUMP FOR DRINKING WATER PURPOSES. IN FACT, EVEN IF SUPERFUND WERE NOT ENACTED, THESE COMMUNITIES WOULD NEVER INAGINE PUTTING A DRINKING WATER WELL RIGHT AT THE EDGE OF THE OLD TOWN DUMP. HOWEVER, BECAUSE OF THE CLEANUP REGULATIONS SUPERIMPOSED FROM RCRA AND OTHER ENVIRONMENTAL STATUTES, WE FIND OURSELVES IN A SITUATION WHERE EPA TELLS US IT IS "REQUIRED" THAT WE CLEAN THIS

WATER TO DRINKING WATER QUALITY STANDARDS WHETHER ANYONE WOULD EVER USE IT OR NOT. THIS APPROACH TO REMEDIAL SELECTION IS RIDICULOUS. WE HAVE TO CONSIDER THE ACTUAL RISKS POSED, THE FUTURE REALISTIC USES OF THE SITE, THE ECONOMIC BENEFIT VERSUS COSTS, AND WHAT THE COMMUNITY ITSELF DESIRES. THE SELECTION OF REMEDY MUST THEN BE ONE THAT MAKES SENSE FOR THAT SITE.

CERTAINLY THERE IS ROOM FOR NATIONAL CONSISTENCY, AND A DEVELOPMENT OF POLICY OR CRITERIA FOR SELECTION TO BE FOLLOWED NATIONALLY. MEVERTHELESS, THERE MUST BE ROOM FOR STATE AND LOCAL CONSIDERATION OF WHAT IS THE APPROPRIATE LEVEL OF REMEDIAL DESPONSE.

CONGRESSMAN SELIFF'S BILL WOULD INTRODUCE A MEASURE OF SANITY IN THE REMEDY SELECTION PROCESS. IT WOULD REQUIRE THE STATE AND/OR THE FEDERAL GOVERNMENT TO LOOK AT THE ACTUAL RISKS POSED BY THE SITE AFTER IMMEDIATE RISK REDUCTION MEASURES ARE TAKEN PREVENTING THE ACTUAL AND IMMEDIATE AND SUBSTANTIAL ENDANGERMENT TO FUBLIC HEALTH. IT WOULD REQUIRE THE RISK ASSESSMENT TO BE NORE RELEVANT TO THE SITE INVOLVED. IT WOULD ALSO CREATE A COMMUNITY ADVISORY COUNSEL WHICH WOULD HELP INVESTIGATE THE CURRENT AND REASONABLY EXPECTED FUTURE USES OF THE SITE, AND GUIDE THE PARTIES IN THE APPROPRIATE SELECTION OF REMEDY.

TT WOULD ALSO ALLOW FOR MORE FLEXIBILITY AND CREATIVITY IN THE SELECTION OF INNOVATIVE APPROACHES TO CLEANUP. FOR EXAMPLE. WITH COGRESSMAN SELIFF'S AND THE STATE OF NEW HAMPSHIRE'S ASSISTANCE, THE EPA HAS AGREED TO ALLOW A NEW TECHNOLOGY FOR THE CLEANUP OF CHIORINATED SOLVENTS AT THE SCHERSWORTH MUNICIPAL LANDFILL SITE IN SCHERSWORTE, NEW HAMPSHIRE. THIS WILL BE THE FIRST TIME THAT THIS TECHNOLOGY IS USED ON SUCH A LARGE SCALE. IT INVOLVES AN IN SITU PERMEABLE WALL THROUGH WHICH GROUNDWATER WILL FLOW, WITH THE CONTENTS OF THE WALL, MADE OF SAMD AND METAL FILINGS, CHEMICALLY REMEDIATING THE CHLORINATED SOLVENTS AS THE WATER FLOWS TEROUGH THE WALL. WE ARE VERY HOPEFUL THAT THIS NEW TECHNOLOGY WILL WORK, AND IT IS CONSIDERABLY LESS COSTLY THAN THE GENERIC APPROACH OF PLACING A CAP OVER THE LANDFILL AND PLACING COLLECTION AND TREATMENT WELLS AROUND THE CAP. HPA SHOULD WORK CLOSELY WITH THE STATE AND THE COMMUNITY TO ALLOW FOR THRSE FLEXIBLE APPROACHES WHEREVER APPROPRIATE IN AN EFFORT TO MAXIMIZE REMEDIAL EFFORTS AND MINIMIZE COSTS.

YOU HAVE A DIFFICULT TASK SEFORE YOU, AND I WISH YOU SUCCESS. THANK YOU FOR THE OPPORTUNITY TO TESTIFY REFORE YOU TODAY. I AM HAPPY TO ANSWER ANY QUESTIONS WHICH YOU MIGHT HAVE.

ADDITIONS TO THE RECORD

American Petroleum Institute 1220 L Street, Northwest Washington, D.C. 20005 (202) 682-8100

Charles J. DiBona



July 28, 1994

The Honorable Norman Mineta
House Committee on Public Works
and Transportation
2165 Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Chairman:

The American Petroleum Institute (API) appreciates the opportunity to submit testimony on H.R. 3800, the Superfund Reform Act. API represents approximately 300 member companies involved in the exploration & production, refining, transportation, and marketing of petroleum and petroleum products. API members will be greatly affected by the changes that Congress elects to make to the Superfund program as members of the community, as potentially responsible parties, and as taxpayers.

API is pleased that Superfund reform efforts are moving forward and views H.R. 3800 as a positive vehicle for moving toward reauthorization of the program. Administration officials and members of Congress are to be commended for their efforts to remedy the current law. API hopes its testimony will assist in those efforts.

Sincerely,

An equal opportunity employer

Testimony of the American Petroleum Institute for the Committee on Public Works and Transportation U.S. House of Representatives on Superfund Reauthorization

The American Petroleum Institute (API) appreciates the opportunity to submit testimony on H.R. 3800, the Superfund Reform Act. API represents approximately 300 member companies involved in the exploration, production, refining, transportation, and marketing of petroleum and petroleum products. API members will be greatly affected by the changes that Congress elects to make to the Superfund program as members of the community, as potentially responsible parties (PRPs), and as taxpayers.

API views H.R. 3800 as a positive vehicle for moving toward reauthorization of the Superfund program. As currently drafted, the bill contains several significant improvements to the current program. These include: development of a national risk assessment protocol to determine site-specific cleanup levels; elimination of the existing preferences for treatment (except for hot spots) and permanence, thus placing containment remedies on an equal footing with treatment; consideration of cost and reasonably anticipated land use as primary criteria in selecting remedies; elimination of most artificial Applicable or Relevant and Appropriate Requirements (ARARs); and disclosure of more information to the public on risk assumptions, uncertainties, and comparisons.

KEY H.R. 3800 REMEDY SELECTION PROVISIONS

API participated in negotiations among environmental groups, industry representatives, and EPA which were sponsored by Representative Swift, Chairman of the Transportation &

Hazardous Substances Subcommittee of the House Energy & Commerce Committee. These meetings achieved agreement on a number of contentious remedy selection issues. The agreements reached in those meetings must be preserved in any comprehensive Superfund reform bill if the broad-based support generated by these House negotiations is to be maintained.

National Risk Protocol

In API's view, the agreement reached on establishing a national risk protocol, which would be based on realistic assumptions and used for conducting risk assessments at Superfund sites, is key to resolving contentious remedy selection issues. Such a protocol could greatly improve the consistent application and understanding of risk assessment at Superfund sites and would correct a serious flaw in the program. EPA's current risk assessment methods are overly conservative and often based on hypothetical, worst-case scenarios, and unrealistic assumptions concerning exposure and toxicity. Instead of utilizing best available science, they frequently reflect simplistic rules and default exposure assumptions that do not consider the actual factors at specific sites.

The critical compromise reached by industry and environmental groups satisfies both environmentalists' desire for greater consistency in the process through the use of a formulaic approach and industry's request for a limit on exaggeration of risk resulting from the compounding of overly conservative assumptions. H.R. 3800 incorporates both changes as agreed to by the parties. Standardized formulae will be established for conducting risk assessments, and the limit on exposure assumptions is set "at the 90th percentile." Both of these elements must be maintained without modification in order to preserve broad-based support for the bill.

PROPOSED IMPROVEMENTS TO H.R. 3800 ON REMEDY SELECTION

There were several areas in the remedy selection section of the current bill where agreement was not achieved. API's positions on three of the most important unresolved issues, groundwater, hot spots, and the national risk goal, are discussed below.

Groundwater

The current bill would require that contaminated groundwater aquifers be cleaned up to meet Safe Drinking Water Act (SDWA) standards as well as this Act's more stringent goals. Currently SDWA standards, not goals, apply to drinking water supplied for consumption by public water systems. The standards do not apply to water in the ground but rather to water after treatment. Therefore, a requirement to achieve these drinking water standards in the aquifer is not always appropriate or necessary.

As with land use, "the reasonably anticipated future uses" of groundwater should be taken into account in selecting an appropriate remedy. Remedies that meet drinking water standards should only be required if the groundwater is being or may be reasonably anticipated to be used as a source of drinking water. Many aquifers in their natural state are unsuited for use as a source of drinking water. Moreover, contaminated groundwater that is not expected to be used as a source of drinking water can be managed in other, more efficient ways that are fully protective of human health and the environment.

Where the use of drinking water standards is appropriate, the point of compliance and the time and manner of achieving compliance should be carefully considered. API believes that the point of compliance should be based on the location of potential human receptors, and the time and manner of achieving compliance should be determined on a facility-specific basis.

Hot Spots

In the proposed legislation, a preference for treatment is specifically maintained for hot spots. API is not opposed to treatment for specific contaminated areas that pose unacceptable risk levels, but unfortunately, the bill defines hot spots to include areas that pose "significant risk to human health or the environment should exposure occur." Thus hot spots could be interpreted to include most hazardous substances at all Superfund sites. As a result, most remedies could include a substantial amount of treatment regardless of the level of risk posed or the degree of protection and long-term reliability that could be provided by a containment remedy.

In order to properly apply this preference for treatment, the term "significant risk" should be clarified. In its April 25, 1994 <u>Summary of Proposed Remedy Selection Revisions</u>, EPA states that it "expects it will define concentrations that would qualify as hot spots as some multiplier of protective concentration levels (e.g., material posing risks several orders of magnitude above protective levels)." API endorses this clarification and recommends that it be incorporated into H.R. 3800.

National Risk Goal

Despite the fact that EPA currently defines protection of human health as a risk range, the current language in the bill requires that the national goal be set at a single, numerical level. API believes that the negotiated rulemaking process called for by H.R. 3800 should determine whether a single numerical level or a risk range would be the most appropriate standard for the national goal. This important question should not be predetermined before it is fully considered in the rulemaking. Furthermore, the form and level for the national goal should not be determined until after the national risk protocol is developed and tested.

PROPOSED IMPROVEMENTS TO OTHER PROVISIONS OF H.R. 3800

Pollutants and Contaminants

Another very important issue of concern to API is the expansion of the liability provisions in Title IV of H.R. 3800 to include pollutants and contaminants. Under the current law, Potentially Responsible Parties (PRPs) are liable only for releases or actions involving "hazardous substances." The definition of the term "pollutant or contaminant" is extremely broad and could encompass many materials not subject to the current law. API strongly believes that all references to the phrase "pollutant or contaminant" must be deleted from the liability provisions of H.R. 3800.

Other issues of concern are listed below by title:

Title I--Community Participation and Human Health

- Community Working Groups The bill requires the President to give substantial weight to the Community Working Group's land use recommendations, and in the event of substantive disagreement, the President is directed to give substantial weight to the view of the residents. One segment of the community should not be given special preference over other community representatives. In the event of a dispute, the President should be free to balance the views of all the affected parties in making ultimate land use decisions.
- Hazard Ranking System For purposes of the hazard ranking system, the bill provides
 that facilities may be grouped together, even if they are not adjacent or geographically
 connected, and scored as a single facility. It is unclear what methodology would be
 used to group these facilities and score them. The substantial impact this could have

on the program as a whole is also unclear. API believes this provision should be deleted.

Title II--State Roles

• State Authority Title II provides states with the authority to enforce compliance with "any standard, regulation, condition, requirement, order, or final determination of the State with respect to remedial actions." This provision counteracts the corrections made in Title V to the current problems with ARARs. States should have the authority to enforce all applicable Federal and State requirements but should not have the discretion to apply any state requirement, whatsoever, to a remedial action. Such authority is too broad and should be deleted from the bill.

Title IV--Liability and Allocation

• Sufficient Cause Under current law, any person who, without sufficient cause, willfully violates or fails to comply with a 106 order may be fined. This standard has worked well and need not be changed. Language currently in the bill narrowly defines sufficient cause as "(i) an objectively reasonable belief by the person to whom the order is issued that the person is not liable for any response costs under section 107; or (ii) the action to be performed pursuant to the order is inconsistent with the National Contingency Plan, as determined by a Federal court." This definition of sufficient cause needs modification. First, reference to an objectively reasonable belief must be deleted as it could violate responsible parties' due process rights. Instead, parties must be allowed to offer a "good faith" defense to liability. Second, the reference to a Federal court determination of inconsistency must be deleted. Since preenforcement

judicial review of 106 orders is prohibited, it would be impossible for a party to obtain a Federal court determination of inconsistency. If a party in good faith believes that an action is inconsistent with the National Contingency Plan, that should constitute sufficient cause.

- Oversight Costs Under current language in the bill, PRPs are liable for response
 action oversight costs. The EPA will develop a national oversight rate to calculate
 these oversight costs and cap such costs at 10% of the total response costs incurred by
 PRPs. However, the provision does not address the status of indirect costs. API
 believes that indirect costs (e.g., administrative and overhead costs) must be
 incorporated into the national oversight rate.
- EPA Authority to Promulgate Regulations Section 407 of the bill provides the President with the authority to promulgate regulations, to clarify or interpret all terms, and to implement any provision of the Act. Questions concerning the interpretation of the terms of the Act must be decided by the Judicial Branch and not the Executive Branch. The bill must be modified by deleting the President's authority to clarify and interpret terms.
- Final Covenants Section 408 of the bill authorizes the President to offer PRPs who enter into settlement agreements a final covenant not to sue concerning any liability to the U.S. if certain conditions are met. One such condition is that, once the remedial action is completed, hazardous substances do not remain at the site in amounts above protective concentration levels. In essence, this condition prohibits facilities employing containment remedies from being offered a covenant not to sue. Since

containment and treatment are on an equal footing (except for hot spots), such a result would be contrary to the spirit of the Superfund reform. API feels that this condition should be deleted.

- Criteria for Premia Current law provides that, in return for a final covenant, a settling party must pay a risk premium compensating for the risk of remedy failure, future liability from unknown conditions, unanticipated cost increases for uncompleted response actions, and the U.S. litigation risk. However, limits on the costs to be paid by a settling party have only been established for the litigation risk premium. API feels that all of the identified premia should have established maximum limitations. Otherwise a settling party could be asked to pay a premium wholly out of proportion to actual response costs.
- rejecting a settlement offer shall be liable for all response costs not recovered through settlements with other parties, including the federally funded orphan share. If, on the other hand, the U.S. rejects a settlement offer, the offerer is only entitled to recover his reasonable costs of defending the action. In effect, the proposed statutory scheme deprives PRPs of their due process rights to a court hearing by creating prohibitive penalties if the parties choose to reject a settlement offer. API believes that any disincentives for post-settlement litigation must be comparable regardless of whether the disincentives affect the U.S. or a PRP.

Conclusion

API is pleased that Superfund reform efforts are moving forward. Administration officials and members of Congress are to be commended for their efforts to remedy the current law and regulations. API sincerely hopes its testimony will assist those efforts.

SPIESTIEPW (CERCLA 94)

91, JUL 29 711 9: 40

TECHNICAL CORRECTION TO AN AMENDMENT TO CERCLA SECTION 101(20), ADDING NEW SUBSECTIONS (G) & (H):

We have been working with the EPA on one technical change.

We are requesting:

Technical Correction:

On lines 7 and 8 of the first paragraph, it refers to "a charitable donation that qualifies under section 170 of the Internal Revenue Code {or Title__}."

"Section 170" deals merely with the income tax charitable deduction.

Sections 2055 and 2522, which deal with estate and gift tax charitable deductions were inadvertently omitted. (Charitable organizations often receive gifts that qualify for estate or gift tax charitable deductions, but may not qualify, technically, for income tax charitable deductions.

Therefore, we suggest one of two approaches:

Deleting the words, "section 170 of."
 This would then refer to "a charitable donation that qualifies under the Internal Revenue Code {or Title 26}", which incorporates the various specific code sections relating to the charitable contribution deductions for income, estate and gift taxes.

Or

Inserting the additional code sections "2055 or 2522."
 This would then provide reference to the specific code sections relating to the income, estate and gift tax charitable contribution deductions.

AN AMENDMENT TO CERCLA SECTION 101(20), ADDING NEW SUBSECTIONS (6) 4 (H):

- (G) The term "owner or operator" includes an organization that has been recognized as a religious, charitable, scientific, or educational organization within the meaning of section 501(c)(3) of the Internal Revenue Code [or Title ____], which holds title to a vessel or facility. However, when title to a vessel or facility is held by the organization, either outright or in trust, as a result of a charitable donation that qualifies under section 170 of the Internal Revenue Code [or Title ___], liability shall be limited to the lesser of the fair market value of the vessel or facility or the actual proceeds of the sale of the vessel or facility received by the organization, provided that:
 - (i) the organization provides full cooperation, assistance, and facility access to persons authorized to conduct response actions at the vessel or facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the vessel or facility;
 - (ii) the organization provides full cooperation and assistance to the United States in identifying and locating the person who owned, operated or otherwise controlled activities at the vessel or facility immediately beforehand;
 - (iii) the organization can establish by a preponderance of the evidence that all active disposal of hazardous substances at the facility or vessel occurred before the organization acquired the facility or vessel; and,
 - (iv) the organization can establish by a preponderance of the evidence that it did not cause or contribute to a release or threatened release of hazardous substances at the vessel or facility.
- (H) The term "owner or operator" shall include, where a facility is owned or operated by an organization whose liability is limited by subsection (G), any "owner pr operator" of the facility immediately preceding the organization whose liability is limited by subsection (G).

Community Health Demonstration Grant Program

When you go to mark up Superfund Reauthorization please support the section of Superfund that will provide Community Health Demonstration Grant Programs for toxic-damaged communities.

These grants will support the establishment of health clinics in communities that are impacted by toxins. The clinics will provide: 1. A location for impacted populations to get diagnosis for health problems which may be associated with local toxic exposures, and treatment where such illnesses are identified.

- 2. Continuous and consistent health diagnosis and treatment throughout the lifetime of an exposed individual.
- 3. The clinics would act as an archive to house the clinical data on patients with the types of health problems potentially associated with the toxic exposures.
- 4. The clinics would provide hands-on training for physicians and scientists who wish to be trained in environmental health science.

For more detailed information on our initiative call for the report Restoring the Public Health Focus of Superfund: Empowering Contaminated Communities with an Environmental Health Grant Program. Environmental Health Network (804) 424-1162.

Over the past decade, the federal government has spent billions of dollars treating dirt.

The Environmental Health Network and
Communities At Risk proposal for a
Community Health Demonstration Grant
Program would cost only \$50 million per year
out of the \$33 billion Superfund will spend over
the next five years.

That equals 0.75%---LESS THAN ONE PERCENT---of the total sum proposed for Superfund. Less than one percent is not too much to ask to protect the lives and health of the children at Superfund sites. These children have the right to be treated as least as good as the dirt.

Please support Community Health
Demonstration Grants as part of the Superfund
reauthorization and restore the public health
focus of Superfund.

July 11, 1994

U.S. House of Representatives
Water Resources and Environment Committee
Honorable Douglas Applegate, Chair
ATTENTION: Ken Kopocis, Majority Counsel, and Staff

Regarding:

Testimony for Amendment to SuperFund Reform Act of 1994 (HR 3800) to relieve 501(c)(3) charities when receiving gifts of property outright or in trust of the onerous burden to use other assets even up to their entire holdings, to clean up properties where such charities were not at fault

I am G. Tom Carter, Director of Trust Services of the General Conference of Seventh-day Adventists, located at 12501 Old Columbia Pike, Silver Spring, Maryland 20904. Phone: 301-680-5003. I am testifying on behalf of the many 501(c)(3) organizations which have a concern over unlimited liability under CERCLA (see attached letters) when such charities are receiving gifts and are not at fault in any way themselves.

We want to commend the sponsors of the SuperFund Reform Act of 1994 for their stated object to bring greater fairness under CERCLA. As reported in the National Law Journal of May 2, 1994, one of the five aims of the new act was to: "Increase the fairness of CERCLA's liability structure and decrease litigation expenses." We know that it is extremely difficult to be fair and equitable in each situation, and the following proposal for 501(c)(3) organizations, we believe, would be in everyone's and the public's best interest.



July 11, 1994

Church World Headquarters • Phone (301) 680-5002 • Fax (301) 680-6090 12501 Columbia Pike, Silver Spring, Maryland 20904-6600

RE: PROPOSED AMENDMENT, SUPERFUND REFORM ACT OF 1994 Senate Bill 1834 and HR 3800

We would very much like you to consider the attached amendment to the Superfund Act which limits liability where a 501(c)(3) organization is not involved in any wrongdoing and receives gifts of property outright or in trust.

We have gotten wide support from other charitable organizations, including the American Council on Gift Annuities with its over 1400 supporting organizations, the Catholic Society for Missions in Africa, the American Baptist Foundation, the United Methodist Church, the Mennonite Foundation, the Baptist Foundation of Texas, and the National Committee on Planned Giving.

The proposal would not, in a normally foreseeable situation, have any impact on the cleanup costs under CERCLA. However, the threat of having all the charities' assets subject to cleanup costs could have a chilling effect on the receiving of charitable gifts of property.

As the amendment makes plain, the property that is involved in the cleanup would be subject to the act in any event, and the organization would still be liable when it is at fault in any way.

My office number is (301) 680-5003, and my FAX number is (301) 680-6090. We thank you for taking time to go over this and would appreciate hearing from you as to your reaction.

Sincerely,

G. Tom Carter, Director

om

Trust Services

Attorney at Law

Richard O. Caldwell Attorney at Law

David E. Johnston

Attorney at Law

Gary Ross Public Affairs Office

PROPOSED AMENDMENT SUPERFUND REFORM ACT OF 1994 Senate Bill 1834 and HR 3800

REASON

The purpose is to limit the strict liability concept of the act for charities when acting without wrongdoing on their part when receiving gifts of property outright or in trust. It is unfair, and not in the public interest, to require that charities would have to use other assets, even up to their entire holdings, to clean up a property for which they had no fault.

PROPOSED ACTION

Therefore, it would seem appropriate, under Senate Bill 1834 and HR 3800, under Sec. 605 after subparagraph (E), or at any other place thought appropriate, the following new subparagraphs:

- (F)(i) The term "owner or operator" includes a 501(c)(3) organization under the Internal Revenue Code which holds title to a vessel or facility. However, the obligations and liabilities of such organization shall be subject to clauses (ii) and (iii) of this subsection provided the 501(c)(3) organization does not participate in the management of the vessel or facility operations that result in a release or threat of release of hazardous substances and complies with such other requirements as the administrator may set forth by regulation. The following clauses (ii) and (iii) shall have no effect on the liability of other parties.
- (ii) When title is held to a vessel or facility by a 501(c)(3) organization as a result of a legal or beneficial interest in a revocable or irrevocable trust or estate, such organization's obligation and liability shall be limited to the extent to which the assets of the trust or estate are sufficient to indemnify such organization, subject to clause (i) above.
- (iii) When title is held to a vessel or facility as a result of an outright gift of property to a 501(c)(3) organization, its obligation and liability shall be limited to the fair market value of the property involved in the release or threat of release of hazardous substances, subject to clause (i) above.

ANSWERS TO QUESTIONS THAT MIGHT BE ASKED REGARDING THE PROPOSED AMENDMENT

1. Why do 501(c)(3) organizations need a special provision?

Answer:

(A) Charities have always been considered a special category. While the doctrine of "charitable immunity" for wrongdoing has been to a great extent eroded, it would be the opposite extreme for charities to be held liable where they are not at fault, particularly beyond the fair market value of the property when receiving gifts of property outright or in trust. Charities have responsibilities different from other organizations; therefore, the law has always recognized that they must be given adequate safeguards to survive.

American Jurisprudence, second edition (Rochester, New York: The Lawyers Co-operative Publishing Co., 1976) "Charities," §12, page 21, states:

Gifts or trusts for charitable purposes are favorites of the law and the courts, and will not be declared void if they can, consistently with the law, be upheld. Every intendment favors charities and gifts for charitable purposes, and it is not only a policy of the people, but likewise a legislative policy, to deal broadly and sympathetically with charity. Of course, a true "charitable" nature of a gift must appear before the courts will extend themselves in its support. Some measure of public benefit must appear or be in prospect from sustaining the gift, and it must appear to be capable of administration and control by the court, before it will be regarded as entitled to special consideration and such extra care and research as may be necessary to sustain it. [Emphasis supplied.]

(B) Congress has specifically enacted legislation enhancing the feasibility of donors' making gifts of property either in trust or directly to the charitable

organization to carry out its purpose to benefit the public.

- (i) The 1969 Tax Reform Act specifically provided for charitable trusts (such as unitrusts and annuity trusts) for which the charity often acts as trustee. The 1969 Act was designed particularly to help the government assess with precision the allowable tax deduction. Under the proposed SuperFund Act of 1994, there is a provision that could prevent charities from sharing with other trustees the limitation of trustees' strict liability. The fiduciary must act exclusively for the benefit of another person to avoid strict liability under the Act. The fact that the charity may be named as a charitable remainderman or beneficiary while acting as trustee should not put a greater burden of liability upon it. Therefore, a section clarifying the charities' special situation is needed.
- (ii) Congress has enacted legislation enhancing the donor's ability through tax incentives to further the cause of his or her favorite charity by giving real property directly to the charity rather than having to sell the property and give the proceeds. Since all charities' gifts must be held and used for public benefit, it is not in the public's interest to hold the charity liable for cleanup costs above the value of the property when the charity is not at fault. The charity's primary interest is to convert the property to a liquid asset to be used in the furtherance of its exempt public purpose.
- Isn't limiting charities' liability to the fair market value of the property which
 they receive in trust or in outright gifts, even though not at fault, giving the

charities an unfair advantage?

Answer: No, this proposed amendment would treat 501(c)(3) charities in receiving gifts of property like trustees, executors, administrators, and others with special fiduciary relationships. All the properties of charities come either directly or indirectly from contributions from donors and are held for certain charitable purposes.

The concept of a charity's being a trustee for all of its property is well settled. Bob Jones University v. United States 103 S.Ct. at 2023 and 2024 states:

Citing *Green v. Connally*, supra, with approval, the Court of Appeals concluded that **Section 501(c)(3) must be read against the background of charitable trust law.** To be eligible for an exemption under that section, an institution must be "charitable" in the common law sense, and therefore must not be contrary to public policy.

Also, quoting the Supreme Court at 2027, the Court states:

In 1891, in a restatement of an English law of charity which has long been recognized as the leading authority in this country, Lord MacNaughten states: "Charity in its legal sense comprises four principal divisions: trusts for relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads."--Commissioners v. Pensel (1891) A.C. 531, 583 [emphasis added]. See e.g., 4 A. Scott, "The Law of Trusts," Section 368, at 2853-2854 (3rd ed. 1967).

The proposed amendment applies only to gifts or potential gifts involving property. Actually, charities could claim that all their assets are held in trust for public benefit and in fairness should be exempt from cleanup costs under the Act where they have done nothing wrong, the one possible exception being the fair market value of the property causing the hazardous condition. Under

this proposal, charities, when receiving gifts of property and having done nothing wrong, would make only the gift property or assets of the particular trust (and not its other assets) subject to liability.

3. Could this proposed amendment lead to abuse or laundering of property involved in the release or threat of release of hazardous substances?

Answer: No. The proposal specifically states it will have no effect on the liability of other parties. In addition, the assets of a particular trust or estate, or the fair market value of the property in the case of an outright gift, will be subject to cleanup costs.

4. Will this proposal add costs to CERCLA?

Answer: No--at least not in any foreseeable situation. Never to our knowledge has any charity been assessed beyond the value of the property or trust assets. In fact, when the charity does nothing wrong this possibility is even more remote. The chilling effect on charities that receive gifts of real property outright or in trust is our concern. With no limitation of liability even when they have done nothing to cause the hazardous condition, charities will often be deterred from receiving such gifts. This chilling effect is in neither the charities' nor the public's interest.



American Baptist Foundation

P.O. Box 851 Valley Forge, PA 19482-0851

Tel: (215) 768-2035 Fax: (215) 768-2470

July 6, 1994

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President

John B Jacobs

G. Tom Carter, Esq. Director, Trust Services General Conference of Seventh-day Adventists 12501 Old Columbia Pike Silver Spring, MD 20904-1608

Dear Tom:

I have watched with interest and hope your efforts to remove or ameliorate the dilemma which all charities face in accepting gifts of real property. We currently have several instances where we are reluctant to consider specific gifts where there is a question of liability due to possible past environmental contaminants. So we watch with great interest how Congress is treating your efforts.

Many potential donors with whom I talk are unaware that environmental liability may pass to us with gifts of property. The potential of a significant legal expense causes us to refuse gifts where there would seem to be little exposure. This does not help us in our relationship with these potential donors.

The many ways this liability might translate into costs to the charity is not clear, but it seems essential that some cap on exposure be granted. It appears reasonable to me that we, as a charity, could be liable up to the value of the property and any contamination during our period of ownership. My understanding is that trustee My understanding is that trustees are exempt from liability. This is the role which we usually play in the ownership. We are trustees for the gift and it is our responsibility to turn this gift into a ministry. The legal current exposure removes many pieces of real estate from being considered for gifts.

Again, my best wishes for your success in this area. With the vast majority of the wealth of this country contained in real estate, it is crucial that some compromise be reached. A limiting of exposure would allow gifts of real estate to realize the good for which they are intended.

Sincerely, Ohn John B. Jacobs

Planned Giving ... the faithful stewardship of resources God has entrusted to us to provide for self, family and ministry to others



July 7, 1994

FAX:

Tom Carter

FAX #:

301-680-6090

FROM:

Don Joiner

Fax 615/340-7006

Churches and church related institutions are often the recipients of gifts of property. They are often unaware, and sometimes caught short of time in receiving property (especially at the end of the year).

I support a bill in Congress that would limit liability, no more than the value of the property, if the church, or church related institution has done nothing wrong.

As you work on this change in the law I hope my support, and that of the other 68 United Methodist Foundations, and over 300 institutions are helpful.

Sincerely,

Donald W. Joiner, Director

United Methodist Planned Giving Resource Center

AMERICAN COUNCIL ON GIFT ANNUITIES

TAL ROBERTS
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> TELEPHIONE 214-720 4774

214-720-2105



July 7, 1994

VIA FACSIMILE FAX (202) 225-3087

The Honorable Douglas Applegate Chairman Water Resources and Environment U. S. House of Representatives

Re: Proposed Amendment Superfund Reform Act of 1994 Senate Bill 1834 and HR 3800

Dear Representative Applegate:

We would like very much to propose an amendment to the Superfund Act of 1994 to exempt 501(c)(3) charities from the strict liability under the Act when they have done nothing wrong whatsoever.

We are very concerned that charities be favorably considered under these bills. Our special concern is charities' being subject to unlimited liability, through no fault of their own, under the strict liability concept.

What we are asking for is exactly the same limitation that is being granted for trustees under the new 1994 Act. In other words, the actual property would still be subject to clean-up costs. If the charity did anything wrong, then the charity would be liable itself beyond the property for clean-up costs. This proposal, as attached, would still mean that any party that had been liable previously would still be liable.

The American Council on Gift Annuities voted at its board of directors meeting on May 1, 1994 to fully endorse the concept of the proposed amendment which is attached.

Thank you very much for your consideration.

Sincerely

Attachment



July 8, 1994

1601 Elm Street Sulte 1700

Mr. G. Tom Carter

Church World Services

Dallas, Texas 75201-7241

214-922-0125

FAX:

214-978-3397

An agency of

The Baptist

General

Convention

of Towns

Trust Services Department

General Conference of Seventh-Day Adventists

FAX: (301) 680-6090

Baptist Foundation of Texas strongly supports two proposed relief provisions for charities in S.B. 1834 and H.R. 3800, the Superfund Reform Act of 1994. The first provision would amend the definition of fiduciary to include organizations exempt from tax under section 501(c)(3) of the Internal Revenue Code when those organizations serve in a fiduciary capacity. The second provision would amend the definition of "owner or operator" to provide that charities that own property, but do not cause hazardous waste on the property, are liable only up to the fair market value of the property.

Baptist Foundation of Texas supports a vast array of charitable endeavors in Texas and throughout the country, including children's homes, retirement centers, hospitals, universities, churches, and missions programs by administering gifts made for the benefit of Baptist charities. The programs we support are vital to the public good, and offer much needed social services that, in their absence, the government would have to supply. All too often, we find ourselves in the difficult position of having been given land, either through a bequest, trust, or outright lifetime gift, that could potentially subject the entire assets of the Foundation to liability for environmental cleanup, even when the Foundation is a passive, sometimes unknowing, beneficiary of land.

These two important provisions would make Superfund fair for charities. The provisions protect assets that exist for the public good from strict liability when the charity is not at fault. If we act as fiduciary of an estate or trust, we should not be strictly liable for hazardous property. If we hold land outright for the public good, we should only be liable for the fair market value of any hazardous land we own.

Thank you for your hard work on behalf of all charities. If you have any questions or desire more information about the environmental concerns of Baptist Foundation of Texas, please call me at (214) 978-3350.

Sincerely,

Ellen Eisenlohr Dorn Associate General Counsel Direct Dial: (214) 978-3350

fc: G. Tom Carter

đo



im carter

Missionaries of Africa

OFFICE OF PLANNED GIVING 1622 21st Street, N.W. Washington, D.C. 20009 TEL: (202) 232-5154

May 3, 1994

Mr. G. Tom Carter Director, Trust Services Seventh-day Adventists 12501 Old Columbia Pike Silver Spring, MD 20904-1608

Dear Mr. Carter,

Thank you for a copy of your letter of March 9, 1994, to Mr. George D. Webster, Webster, Chamberlain & Bean, 1747 Pennsylvanie Avenue, NW, Washington, DC 20006, concerning the SuperFund Reform Act of 1994, US Senate Bill 1834 and US House Bill 3800.

We, the Missionaries of Africa, located in Washington, DC, and a 501(c) organization, agree with the proposed changes made by your good self, as Director of Trust Services at the Seventh-day Adventist, in your letter of March 9, 1994, to Mr. George D. Webster.

We do support and thank you for your efforts in this matter, and we hope that the US Government authorities will listen attentively to your wise and fair suggestion "that would exempt all 501(c) charities from hazardous waste under CERCIA unless we actually participated or were at fault in some way".

Thank you again for keeping us informed of this matter.

Sincerely yours,

Roga L. Bisson, M. AFR.
Rev Roger L. Bisson, M. AFR.
Director/Planned Giving

July 7, 1994



1110 North Main Street Post Office Box 483 Goshen, IN 4652"

Toll-free 1-800-348-7468 Telephone 219 533-9511 Eax 219 533-5264

Mr. Tom Carter Director of Trust Services General Conference of Seventh Day Adventists 12501 Columbia Pike Silver Spring, MD 20904

RE: SUPERFUND REFORM ACT OF 1994

Dear Mr. Carter:

I am writing to express support for the efforts to include language in the Superfund Reform Act of 1994 which would limit a charity's exposure to liability for environmental clean-up.

While not familiar with the details of the legislation pending as SB 1834 and HR 3800, I advocate a change in the law to restrict a charity's liability to the actual fair market value of contaminated real estate for which the charity serves as trustee, unless, of course, the charity is directly responsible for the contamination on the real estate.

The policy reasons for protecting innocent charities from disproportionate financial exposure seem clear, especially since charities sometimes receive potentially contaminated real estate without the opportunity to perform due diligence.

Good luck in your efforts to include an amendment supporting charities in the bill.

Very Truly Yours,

Randall M. Jacob Legal Counsel

Legal Counsel

RMJ:

KALLINA & ACKERMAN

LAW OFFICE 6507 YORK ROAD

BALTIMORE, MARYLAND 21212

EMANUEL I KALLINA 8° ICHATHAN G ACKERMA CHARLES B JOHLS KATHY HANSCN''

(410) 377-2170 FAX (410) 377-2179

July 7, 1994

JENNIFER E BONNEY BEVERLY YOUNGSAR

To the appropriate Committees and Subcommittees of the United States Senate and House of Representatives

Re: Proposed Amendment, SUPERFUND REFORM ACT OF 1994 --Senate Bill 1834 and House Bill HR3800 ("Bill")

I am the Chairman of the Government Relations Committee of the National Committee on Planned Giving, which represents 75 local councils and over 6,500 professionals in the field of gift planning. Our local council's membership encompasses almost every major charity in the United States.

I have reviewed the Bill which would exempt an Internal Revenue Code Sec. 501(c)(3) organization from liability where the charity has not directly or indirectly participated in the environmental problems.

I heartily support this Bill. It is not appropriate, nor in the public interest, to require a charity to use its other assets, even up to its entire net worth, to clean up an environmental problem which it not create.

The Bill does not in any way affect the liability of the culpable party. Neither does it, in any way, exempt the property which is part of the environmental problem. It only prevents charity from being unduly burdened with the prospect of an unlimited liability over which it has absolutely no control.

We greatly appreciate your favorable consideration of the Bill. We believe it to be in the public's best interests.

Sincerely yours,

Emanuel J. Kallina, II

EJK:by

FAX EPA 3.25-94

THE DATA IN THE SHAFFER (MINDEN, WV) SITE REVIEW TRIP REPORT INDICATES NO MAJOR SURPRISES. SOME AREAS OF THE MINDEN SITE ARE CLEAN OF CONTAMINANTS...SOME AREAS OF THE MINDEN SITE ARE STILL CONTAMINATED WITH RESIDUAL PCBS. EPA HAS ALWAYS STATED THAT FACT. THE LATE OCTOBER SAMPLING RESULTS SUPPORTS EPA'S PREVIOUS FINDINGS.

THE EPA SAMPLING PLAN INVOLVED SCREENING OF THE SAMPLES.
ADDITIONALLY, A NUMBER OF THE SAMPLES WERE SENT AWAY TO BE
ANALYZED AT APPROVED CONTRACT LABORATORIES. A NUMBER OF THESE
SAMPLES WERE SPLIT OR SHARED WITH THE REPRESENTATIVE FROM THE
BERWIND LAND COMPANY, A POTENTIALLY RESPONSIBLE PARTY AND THE
STATE OF WEST VIRIGNIA. WE EXPECT THE BERWIND SAMPLING RESULTS
TO BE RECEIVED SOMETIME IN THE NEAR FUTURE. THIS DATA WILL THEN
BE INCLUDED IN THE REPORT WHICH IS IN THE INFORMATION REPOSITORY
AT THE OAK HILL PUBLIC LIBRARY. SEVERAL INTERESTED PARTIES HAVE
RECEIVED COPIES OF THE EPA SITE REVIEW TRIP REPORT DATED JANUARY
3, 1994.

THE DATA SHOWS SOME CONTAMINATION REMAINING ON SITE, AND SOME OFF SITE CONTAMINATION. SOME OFF SITE CONTAMINATION WAS NOTED ALONG THE BANKS OF ARBUCKLE CREEK. 19 OF THE 22 CREEK SAMPLES TAKEN CAME UP 'CLEAN'. ONLY THREE WERE NOTED TO BE ABOVE THE TEN PART PER MILLION RANGE. THESE THREE RESULTS REMAIN BELOW THE 50 PART PER MILLION RANGE. THE '50 PART PER MILLION LEVEL' WAS THE ACTION LEVEL USED IN INITIAL AND PAST SITE ACTIONS. HEAVIER CONTAMINATION RESULTS SHOWED UP IN SEVERAL SAMPLES TAKEN DIRECTLY ON THE SHAFFER SITE. THIS WAS EXPECTED AND CONFIRMS BPA'S KNOWLEDGE OF THE SITE FOLLOWING PREVIOUS REMEDIATION.

LOOKING AT THE REPORT CONCENTRATION LEVELS FROM THIS STUDY AND COMPARING THIS TO THE PREVIOUS EPA DATA, CONFIRMS WHAT EPA HAS BEEN AWARE OF, CONTAMINATION REMAINS PELATIVE TO THE SITE ESFECIALLY ON SITE.

A JUNE 1, 1993 AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY (ATSDR) PUBLIC HEALTH ASSESSMENT ON THE SITE CONCLUDED THAT THE "SITE (ON SITE) POSES A PUBLIC HEALTH HAZARD BECAUSE OF THE ON-SITE RISK TO HUMAN HEALTH RESULTING FROM POSSIBLE EXPOSURE TO HAZARDOUS SUBSTANCES (PCBS) AT CONCENTRATIONS THAT MAY RESULT IN ADVERSE HEALTH EFFECTS." THE ATSDR, IN THIS 1993 REPORT, INDICATES IT WAS UNABLE TO DETERMINE WHETEER THE SITE POSES ANY PUBLIC HEALTH THREAT TO THE GENERAL OFF-SITE POPULATION, CITING THE NEED FOR ADDITIONAL PCB DATA. THUS THE HEALTH ASSESSMENT STATES THAT THE SITE IS AN "INDETERMINATE" HAZARD FOR THE GENERAL OFF-SITE POPULATION. EPA IS NOW SEEKING FURTHER COMMENTS FROM ATSDR FOLLOWING ISSUANCE OF THE MOST RECENT SAMPLING RESULTS AND THE SITE FILE.

SO WHAT IS EPA'S NEXT STEP???
THE PAST 'FILE REVIEW' AND RECENT SITE VISITS INDICATE A NEED FOR

FURTHER ACTION. EPA, WITH THE NEW CONFIRMATION DATA,
WILL COME INTO FAYETTE COUNTY IN EARLY MAY OF THIS YEAR TO HOLD
OPEN PUBLIC AVAILABILITY SESSIONS. THIS IS WHERE EPA WILL MEET
WITH INTERESTED CITIZENS AND INTERESTED CROUPS OVER SEVERAL DAYS.
EPA NILL NOTIFY THE HEDIA OF THE LOCATION AND TIMES OF THE FUBLIC
AVAILABILITY SESSIONS. THESE WILL BE DAY AND EVENING SESSIONS.
EPA WILL RAPLAIN THE LATEST SAMPLING RESULTS, LISTEN-TO-CITTMEN
CONCERNS, AND ELICIT THEIR IDEAS AND WHAT THE CITIZENS AND
GROUPS BELIEVE SHOULD BE THE NEXT ACTION TAKEN BY EPA.

EPA WILL THEN TAKE THE PROFFERED VIEWS OF THE CITIZENS AND INTERESTED GROUPS, MEET WITH THE STATE OF WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, THEN MAKE A JUDGMENTAL DECÍSION ON WHAT EPA'S NEXT COURSE OF SITE RELATED ACTION SHOULD BE. EPA IS REQUESTING THAT ALL CITIZENS AND INTERESTED GROUPS OF MINDEN AND FAYETTE COUNTY GIVE US THEIR INPUT ON THIS ISSUE DURING THE PUBLIC AVAILABILITY SESSIONS TENTATIVELY SCHEDULED FOR EARLY MAY.

EPA HOLDS THE RESPONSIBILITY FOR OVERSIGHT, AND ISSUANCE OF FURTHER ACTION AT THE SHAFFER SITE, MINDEN, WV.





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